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

IN THE MATTER OF AN INQUEST INTO THE DEATH OF
LEO NORNEY

BEFORE HIS HONOUR JUDGE McGURGAN,
SITTING AS A CORONER

Sections	Paragraphs
Introduction	[1] - [2]
The law relating to the holding of Inquests	[3] - [5]
Human Rights Act 1998 and ECHR Article 2	[6] - [14]
Delay in hearing evidence	[15] - [16]
Case management	[17] - [22]
Scope	[23]
Rules of Engagement: The Yellow Card	[24]
Evidence	[25] - [30]
The scene	[31] - [35]
Evidence from civilians	[36] - [106]
Military evidence	[107] - [221]
Police evidence	[222] - [251]
Experts	[252] - [279]
Discussion	[280] - [314]
Conclusion	[315] - [316]

Appearances

Mr Ian Skelt KC with Mr Michael McCartan BL appeared on my behalf,
instructed by Cathy Devlin, Legacy Inquest Unit (LIU);

Ms Fiona Doherty KC with Mr Andrew Moriarty BL appeared on behalf of the
Next of Kin, instructed by Fearghal Shiels, Madden and Finucane solicitors;

Mr Mark Robinson KC with Mr David Reid BL appeared on behalf of the Ministry of Defence (MOD) and Police Service for Northern Ireland (PSNI), instructed by Rosemary Gilmore, Crown Solicitor's Office (CSO);

Mr Mark Mulholland KC and Mr Michael Egan BL appeared on behalf of M1 instructed by Matthew Garbutt, Devonshires solicitors;

Mr Liam McCollum QC and Mr Andrew McGuinness BL appeared on behalf of M2 instructed by Stephen Clarke, McCartan Turkington Breen, solicitors;

Mr Alva Brangam KC and Mr Ian Turkington BL appeared on behalf of M3 instructed by Robert Mackay McCartan Turkington Breen, solicitors.

Introduction

[1] This inquest concerns the death of Leo Anthony Norney. He was born on the 25th April 1958 and died on the 13th September 1975 at Belfast.

[2] An inquest into his death was conducted on the 2nd September 1976 and an open verdict recorded. The Attorney-General for Northern Ireland directed on 19th February 2014 that a new inquest be held.

The law relating to the holding of inquests

[3] This inquest was heard by me sitting without a jury. Section 18(1) and (2) of the Coroner's Act (Northern Ireland) 1959 provides –

“(1) If it appears to the coroner, either before he proceeds to hold an inquest or in the course of an inquest begun without a jury, that there is reason to suspect that –

(a) *[repealed]*;

(b) the death occurred in prison; or

(c) the death was caused by an accident, poisoning or disease notice of which is required, under or in pursuance of any enactment, to be given to a government department, or to any inspector or other officer of a government department or to an inspector 2 appointed under Article 21 of the Health and Safety at Work (Northern Ireland) Order 1978; or

(d) *[repealed]*;

(e) the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public;

he shall instruct the Juries Officer to summon a sufficient number of persons in accordance with the Juries (Northern Ireland) Order 1996 to attend and be

sworn as jurors upon such inquest at the time and place specified by the coroner.

(2) If in any case other than those referred to in subsection (1) it appears to the coroner, either before or in the course of an inquest begun without a jury, that it is desirable to summon a jury, he may proceed to cause a jury to be summoned in accordance with the said sub-section."

[4] This provision permits a Coroner to have a jury summoned in cases falling outside the categories set out in section 18(1), however, after consideration of the nature of this inquest and the absence of any objection from the properly interested persons, I decided not to summon a jury in this inquest.

[5] Rules 15, 16 and 22(1) of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 provide as follows -

"15. The proceedings and evidence of an inquest shall be directed solely to ascertaining the following matters, namely:

(a) Who the deceased was;

(b) How, when and where the deceased came by his death;

(c) The particulars for the time being required by the Births and Deaths Registration (Northern Ireland) Order 1976 to be registered concerning the death.

16. Neither the coroner nor the jury shall express any opinion on questions of civil or criminal liability or in any matter other than those referred to in the last foregoing rule provided that nothing in this Rule shall preclude the coroner or the jury from making a recommendation designed to prevent the recurrence of fatalities similar to that in respect of which the inquest is being held.

22. (1) After hearing the evidence the coroner, or, where the inquest is held by a coroner with a jury, the jury, after hearing the summing up of the coroner shall give a verdict in writing, which verdict shall, so far as such particulars have been proved, be confined to a statement of who the deceased was, and how, when and where he died."

Human Rights Act 1998 and ECHR Article 2

[6] The European Convention on Human Rights, as enshrined into United Kingdom law by the Human Rights Act 1998, was not in force at the time of the death in 1975. Whilst it is clear that the legislation does not have retrospective effect (*McQuillan* [2022] AC 1063 *para* 165) there is clear authority that inquests taking place after the

coming into law of the Human Rights Act must comply with the various procedural requirements of Article 2 [McCaughey [2012] 1 AC 725].

[7] Article 2 provides –

“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 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.”

[8] It is settled law that an inquest to which Article 2 applies must answer the question in Rule 15(b) of “how” the deceased died as meaning ‘how in and in what circumstances’ – (*Middleton*, per Lord Bingham para 35).

[9] The requirements of Article 2 have been the subject to of substantial discussion in previous cases. I need not set out all of those requirements but highlight the following:

[10] In *Jordan* [2016] NI Coroner 1, Horner J:

“It is widely acknowledged that one of the functions of an inquest is to “allay rumour and suspicion”. Further, it is well established that in order to meet the procedural requirements of Article 2 of the European Convention on Human Rights (ECHR) in a case such as this, involving the use of lethal force by the police, the remit of the inquest must extend beyond simply an investigation into the immediate cause of death and must consider also the broad circumstances in which the death occurred. Further the inquest must be capable of leading to a determination of whether the use of lethal force was justified.”

[11] In *Re Deery* [2017] NI Coroner 1, Colton J said:

“[8] However as Stephens J made clear in *Re Jordan* [2014] NIQB 11 at paragraph [121]: “An inquest which does not have the capacity to reach a verdict ‘leading to a determination of whether the force used ... was or was not justified’ would not comply with the requirement of Article 2.”

[9] 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 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”.

[12] As is set out below, there is convincing evidence that the Army used force against the deceased. In relation to whether the use of that force is justified I have adopted paragraphs 173 to 187 of Horner J’s decision in *Re Jordan*. He summarised the applicable test (albeit expressed in reference to the circumstances of that case) as follows:

“Accordingly, the task for this inquest when conducting an Article 2 compliant inquest must be to ask whether Sergeant A had an honest and genuine belief that it was necessary for him to open fire. Whether that belief was subjectively reasonable, having regard to the circumstances pertaining at the time, is relevant to the question of whether it was honestly held. I should not examine A’s belief from the position of a detached observer but from a subjective position consistent with the circumstances in which he found himself and which will necessarily also involve taking into account his training, experience and his knowledge and awareness of the RUC Code of Conduct. I have to consider whether his decision to open fire was “absolutely necessary”. To put it another way, whether in all the circumstances it was proportionate, that is, “reasonable, having regard to what the person honestly and genuinely believed”.”

[13] This is an inquest and not a bipartisan trial. However, the question arises as to who, if anyone, bears the burden of proving whether force was/was not justified? The correct approach was again set out by Colton J in *Re Deery*:

“[11] In relation to the onus of proof in circumstances where Manus Deery was killed by an agent of the State, it is for the State to justify the force used. In relation to the standard in an inquest context any fact has to be proved to the civil standard, that is the balance of probabilities.

[14] What is meant by the balance of probabilities? In *In re B (Children)* [2008] UKHL 35, [2009] 1 AC 11. Lord Hoffmann said:

“13. ... I think that the time has come to say, once and for all, that there is only one civil standard of proof and that is proof that the fact in issue more probably occurred than not. ...

14. Finally, I should say something about the notion of inherent probabilities. Lord Nicholls said, in the passage I have already quoted, that –

‘the court will have in mind as a factor, to whatever extent is appropriate in the particular case, that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court concludes that the allegation is established on the balance of probability.’

15. Lord Nicholls was not laying down any rule of law. There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not. Common sense, not law, requires that in deciding this question, regard should be had, to whatever extent appropriate, to inherent probabilities. If a child alleges sexual abuse by a parent, it is common sense to start with the assumption that most parents do not abuse their children. But this assumption may be swiftly dispelled by other compelling evidence of the relationship between parent and child or parent and other children it would be absurd to suggest that the tribunal must in all cases assume that serious conduct is unlikely to have occurred. In many cases, the other evidence will show that it was all too likely. If, for example, it is clear that a child was assaulted by one or other of two people, it would make no sense to start one’s reasoning by saying that assaulting children is a serious matter and therefore neither of them is likely to have done so. The fact is that one of them did and the question for the tribunal is simply whether it is more probable that one rather than the other was the perpetrator.”

Lady Hale said:

“70. ... Neither the seriousness of the allegation or the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies. ...

72. As to the seriousness of the allegation, there is no logical or necessary connection between seriousness and probability. Some seriously harmful behaviour, such as murder, is sufficiently rare to be inherently improbable in most circumstances. Even then there are circumstances, such as a body with its throat cut and no weapon to hand, where it is not at all improbable. Other seriously harmful behaviour, such as alcohol or drug abuse, is regrettably all too common and not at all improbable. Nor are serious allegations made in a vacuum ...”

Delay in hearing evidence

[15] This inquest has heard evidence from witnesses who are being asked to recall events at over 45 years remove. Delay, and its results, are important considerations in this case. In light of the importance of delay I set out in full the comments of Horner J in *Re Jordan* [2016] NICoroner 1 at [76] – [79]

“[76] It is well recognised that delay of itself can cause injustice. This is because human recollection is fallible and it becomes, in general, more unreliable with the passage of time. This has been remarked upon in countless judgments. Any reasonable person knows that the separate recollections given today of an incident 25 years ago by two observers, no matter how vivid the happening, are likely to be very different. Further these recollections are likely to be very different from any recorded at the time. It is a universal truth recognised by many authors from Proust to Friel. I commented upon this in *McKee (Michael) v The Sisters of Nazareth* [2015] NIQB 93 at paragraph [8].

[77] In *R v John Robinson* [1984] 4 NIJB MacDermott J said at paragraph 15:

“In this respect the accused’s evidence is clearly wrong and I ask why this is so. Is he lying or his recall faulty? The shooting incident occupied a time space that could better be measured in seconds rather than minutes and events were occurring much more quickly than it takes to describe them. It was a period of high tension and, he believed, high danger for the accused. Some people have the gift of total recall of events lasting long periods – others can get mixed up as to events which were over in seconds. This is not a personal reflection – it was confirmed by the evidence of Mr Patton, consultant psychologist. Having observed the accused and sought to assess his credibility quite objectively I am satisfied that his recall in relation to this part of the incident is and will remain distorted and that he is not lying or seeking to conceal something from me.”

[78] The problems with memory are compounded by delay. The law has long recognised this. Girvan LJ discussed the problem in *R v JW* [2013] NICA 6 in the context of historical sexual abuse. He said:

“[14] What has been said in the context of the prejudice created by delay in the context of civil litigation applies with even greater force in the context of criminal proceedings for the outcome of criminal proceedings may subject the defendant to potentially severe penal consequences and to extensive damage to his private life and reputation. In *Birkett v James* [1978] AC 297 in the context of a civil case of alleged want of prosecution Lord Salmon said:

‘When cases (as they often do) depend predominantly on the recollection of witnesses, delay can be most prejudicial to defendants and to the plaintiff also. Witnesses’ recollections grow dim with the passage of time and the evidence of honest men differs sharply on the relevant facts. In some cases it is impossible for justice to be done because of the extreme difficulty in deciding which version of the facts is to be preferred.’

As was pointed out by the Law Commission in its Consultation Paper 151 on Limitations of Actions the justification for limitation periods lies in the key concern that a defendant may have lost relevant evidence and be unable to defend the case adequately. Due to the loss of vouchers or other written evidence and the death or disappearance of witnesses it might be very difficult if not impossible for a defendant to meet a claim made after several years had gone by. Even where witnesses are still available they might have no memory or an inaccurate memory of the events in question. As long ago as 1829 in their first report the Real Property Commissioners (Parliamentary Paper 1829 Volume X 1, 39) stated that:

‘Experience leads us to the view that owing to the perishable nature of all evidence the truth cannot be ascertained on any contested question of fact after a considerable lapse of time.’

If this proposition were invariably the case all old criminal cases would be bound to be stayed because justice could not be done and a fair trial could not be conducted. Our criminal law does not go that far. A more accurate way of expressing the matter is that as time elapses the ascertainment of the truth of an allegation becomes increasingly difficult. As the Law Commission paper demonstrates it is clear that “it is desirable that claims which are brought should be brought at a time when documentary evidence is still available and the recollection of witnesses are still reasonably fresh”. This is the best way to ensure a fair trial and thus to maximise the chance of doing justice. Delay of its very nature increases the risk of injustice occurring. This is a point which any summing up should bring home to the jury so that they sufficiently appreciate the point.

[15] Where a recent complaint of sexual abuse is made a detailed investigation can be made of the allegation in its full factual matrix. The time of the alleged incident can be identified. The location can be identified, examined and photographed. Forensic examination can be carried out of the scene of the alleged crime, of the complainant and of the defendant. Body samples can be taken and analysed. Potential

witnesses can be clearly identified and questioned. The precise familial or social context in which the alleged events happened can be closely scrutinised so that as clear a picture as possible can be formed of the full context of the alleged abuse. Any alleged recent complaints to third parties can be carefully scrutinised. The defendant will have an opportunity against the picture flowing from a recent investigation to put forward explanations of the alleged events, can respond to the specific allegations in their precise context and can present a full defence (such an alibi) if one is available. Where an allegation is made long after the event and is made in an unidentified and wide time frame the police can carry out few of the investigative steps open to them at the stage of a recent complaint. The defendant thus suffers the real and clear prejudice presented by the fact that the complaint cannot be fully scrutinised and investigated in the light of recent events by an impartial police investigation. A consequence flowing from this is that the case will often come down to what is in reality a dispute between two persons with one person's word against another. A jury must fully appreciate the risks presented by having to decide a case on that basis since it necessitates the jury deciding whose evidence is preferable in the absence of any of the police investigative steps which are normally available to subject to scrutiny the honesty and reliability of a recent complaint. The absence of such timely investigation often removes the possibility of a more objective analysis. A jury should be made aware in the course of the summing up of these difficulties presented to a defendant arising out of a late complaint and a delayed investigation."

[79] In this inquest nearly 25 years have passed since the events which are under detailed consideration took place. The passage of such a period of time is bound to have affected the recollections of those who witnessed and participated in the events of that fateful day 25 November 1992. Some witnesses may have deliberately tried to erase these terrible events from their memory. Some may, whether consciously or sub-consciously, be simply remembering the statements they gave after the event and/or their testimony to the original inquest in 1995 and/or the 2012 inquest. It is important that I recognise the weaknesses and difficulties that face any witness trying to recall accurately what happened a quarter of a century ago, a length of time greater than the period between the ending of the First World War and the commencement of the Second World War. It is not possible to over-estimate the difficulty in relying on sworn testimony in a search for the truth at a remove of 25 years from the event to which it relates."

[16] I bear these observations very closely in mind when considering the evidence in this case and particularly that given by witnesses. This Inquest relates to a death which occurred in 1975, some 48 years ago.

Case Management

[17] Just prior to the date this Inquest was due to commence, I received a new statement from M2, a military witness present at the time of the death of the deceased. As a result, I formed the opinion that the contents of that statement meant that a criminal offence may have been committed and therefore, as per s.35 (3) Justice (NI) Act 2002, I was obliged to report same to the Director of the Public Prosecution Service.

[18] I opened the Inquest on 4th November 2021 and adjourned pending the outcome of the decision by the PPS. I was subsequently informed that the PPS had no objection to the Inquest proceeding and the PSNI also confirmed that they had no objection to the statement of M2 being circulated amongst the PIPS, which was done.

[19] I intend to share the findings of this Inquest to the Director of the Public Prosecution Service as a matter of completeness.

[20] I heard submissions in respect of anonymity, screening and video link applications for former soldiers M1, M2, M3, M4, M18, M62, M20, M61 and Mr. Bill Davidson. I granted these applications in a written ruling delivered on 22nd April 2022.

[21] The Inquest resumed on 25th April 2022 on what would have been the deceased's 64th birthday.

[22] Evidence was heard on 25th, 26th, 27th and 28th April 2022, 3rd, 4th and 9th May 2022, 2nd September 2022, 10th and 11th November 2022.

Scope

[23] A scope document was circulated among the PIPs and was agreed. I am satisfied that this inquest has addressed all the relevant issues and that where possible I have reached a finding in respect of the matters which come within the scope of this inquest.

Rules of Engagement: The Yellow Card

[24] Prior to deployment in Northern Ireland, all army personnel received instructions about the circumstances in which they were authorised to use their personal firearms entitled "Instructions by the Director of Operations for Opening Fire in Northern Ireland". These instructions were printed on a yellow card and were commonly referred to as the "Yellow Card Rules". They were required to be carried at all times and were for the guidance of soldiers operating collectively and individually. These rules were not absolute, they were advisory and did not carry

the force of law. The relevant sections of the yellow card rules, in force in July 1975, and considered at this inquest are set out below;

“ ...General Rules.

2. Never use more force than the minimum necessary to enable you to carry out your duties.

3. Always first try to handle the situation by other means than opening fire. If you have to fire;

a. Fire only aimed shots.

b. Do not fire more rounds than are absolutely necessary to achieve your aim.

...

You may fire without warning.

13. Either when hostile firing is taking place in your area and a warning is impracticable or when any delay could lead to death or serious injury to people whom it is your duty to protect or to yourself and then only;

a. against a person using a firearm against members of the security forces or people whom it is your duty to protect. or

b. against a person carrying a firearm if you have reason to think he is about to use it for offensive purposes.

Evidence

[25] I am grateful to Lieutenant Colonel Meadows who prepared a statement explaining military logs and also for providing some context to the set-up of the military in 1975 in NI.

[26] Headquarters Northern Ireland (HQNI), based at Lisburn, was responsible for all military operations in Northern Ireland in 1975. Northern Ireland was divided by the military into three Brigade Areas, namely, 39 Brigade, 8 Brigade and 3 Brigade.

[27] Each Brigade area was further subdivided into areas for which individual battalions were responsible.

[28] The deceased, Leo Norney, came by his death in the Brigade Area of 39 Brigade which covered the Greater Belfast Area. The relevant area was under the responsibility of the 1st Battalion Black Watch.

[29] In the course of his evidence to the inquest, M19, Adjutant of the 1st Battalion, the Black Watch, explained that communications between two regiments responsible for areas adjacent to each other normally went between the respective Brigade Command Operations Rooms. There was an ability for soldiers on the ground from different regiments to have direct contact but that there would have been written standing instructions together with further orders given regarding any particular operation.

[30] From the Military Logs at; A 1 BW Log, dated 13th September 1975 from 42C at 23.08 stated as follows:

“CONTACT 1 shot fired by 2 men possibly one armed. Patrol returned 8x7.62 & hit one, both men ran off, injured man fell, other man picked up weapon and ran into Y/3. Loc [location] of shooting N Ardmonagh Gdns/Path to Whiterock Rd”.

At 23.17 1 BW [sender] to C Coy 1RHF [recipient]:

“ 1 BW wish an escort on Whiterock Rd to use a tracker dog..”

At 23.32 C Coy [sender] to RHF TAC Group [recipient]:

“ tracker dog from 1 BW in C Coy area.”

The Scene

[31] Mr Brian Murphy, Consulting Engineer, of TBM Consultants was retained on behalf of CSNI. He visited the locus as it is now and prepared three reports and drawings and took photographs. Mr Murphy also had access to RUC photos taken at the time together with plans of the area from 1975. Unsurprisingly the locus has now changed from how it was in September 1975, mainly by the addition of more housing. I do not intend to rehearse those differences. I have attached Mr Murphy’s plans as Annex A to these findings to assist with understanding the scene as it then was.

[32] I and my legal team also attended a locus inspection prior to the commencement of the Inquest and a further site inspection with Mr Murphy and the legal representatives of the Properly Interested Parties took place in June 2021.

[33] In brief, the locus of the shooting where the deceased came by his death is Ardmonagh Gardens in the Turf Lodge area of Belfast. Mr Murphy explained that a path known as “Shepherd’s Path” ran alongside a fence which bounded St. Aidan’s Christian Brother’s Primary School. The path linked the Whiterock Road with Ardmonagh Gardens. The path was bounded on its other side by waste ground. On this waste ground was what was referred to during the evidence as “the mound”. Mr Murphy explained that “the mound” appeared from the 1975 photos to be no more than 2 feet high and resembled a rocky outcrop. He further explained that he measured the distance from “the mound” to the end of the fence bounding the school at the Ardmonagh Gardens end as being 42 metres.

[34] It would appear that in Ardmonagh Gardens there were two street lights on the side of the street with the even numbered houses, one outside No.70 and one between Nos 60 and 62. No evidence was available as to whether or not they were operating at the time in question.

[35] On Ardmonagh Gardens a Mini car was parked of which I will refer to later in these findings but the significance of it is that it sustained a single bullet entry hole at the rear of the car. I note that whilst there is also another mark pictured to the rear of the car the ballistics experts' joint position was of only one bullet hole.

Evidence from civilians

[36] In her evidence to the Inquest, Ms Anne Wiggins, sister of the deceased, stated that Leo was born on the morning of 25th April 1958. She described him as being a very happy and contented child, much loved by people. He was affectionately known as his mother's "blue eyed boy." He was one of seven children.

[37] Leo did not like school and was disinterested in all subjects except woodwork. He was nicknamed "Teabo" after he made a sword, Teabo being a cartoon character at the time who would brandish a very fine sword.

[38] Ms Wiggins described Leo as being popular across the religious divide, loving the music of that era, and securing a job in the General Post Office as well as being engaged to Lucy Mulholland.

[39] According to Ms Wiggins, she would have been aware if Leo had been threatened before he died; in particular by the British Army. She did not believe he was threatened by anyone. He was a happy-go-lucky boy. In addition, she stated that Leo was not involved in any paramilitary activity as her father was very strict with the boys to ensure they would not get involved in any subversive activity.

[40] Both Mrs Annie Norney and Mr Francis Norney, the deceased's parents, had provided depositions to the original Inquest. They are both now deceased themselves and their evidence was admitted under Rule 17. Mrs Norney stated that at 7pm on 13th September 1975 she spoke with the deceased who indicated that he may go to a party that night. His last words to his mother were " If I go to the party I won't be home. If I don't go the party I will be home at my usual time at about 12.30am". At around 4.10am on 14th September her house was searched by the army and nothing was found. Later that morning Mrs Norney went looking for the deceased. She didn't locate him and returned home to make the dinner putting the deceased's dinner in the oven for him. At around 2.50pm a priest called at the house who advised her that CID Springfield Road "are a hundred per cent sure that your son Leo was shot last night."

[41] The deceased's body was subsequently identified at the Royal Victoria Hospital by James Norney, the deceased's brother.

[42] Ms Lucy Mulholland (nee Davidson) provided a statement to the Inquest in addition to statements to Father Denis Faul on 19th September 1975 and the RUC on 5th October 1975. Ms Mulholland also provided evidence to the original Inquest and I have the benefit of that deposition (which reads the same as her police statement).

[43] In her most recent statement dated 12th May 2021, Ms Mulholland stated that she knew Leo for about two years, that she had been in love with him and that she would have known if he had been involved in any terrorist activities which she stated he was not. She further confirmed in her oral evidence that she had been engaged to the deceased.

[44] Mr Thomas McKernan had previously made a statement to the RUC and gave evidence before the original Inquest. He had also provided a statement to Father Raymond Murray on behalf of Father Faul, dated 19th September 1975.

[45] In his evidence to this Inquest, Mr Thomas McKernan stated that on 13th September 1975 he was 15years old. He did not know the deceased, Leo Norney.

[46] At approximately 11.05pm he was walking along the Whiterock Road with three friends, namely Bobby Douglas, Kieran Ford and Frankie Pyper. All of them had all been at St Thomas School Disco, on the Whiterock Road.

[47] He could not recall what time they left the disco, but it was dark. When they did leave the disco, he stated that they walked onto the main Whiterock Road then into Ballymurphy Road and back out to the Whiterock Road via Glenalina Road.

[48] He then recalled hearing two shots fired in quick succession. He and his friends then took a short cut home across some fields opposite Glenalina Road. As they were going across the fields towards Shepherd's Path they were met by 3-5 soldiers. They had walked about 20-30 steps into the field. Some of these soldiers approached the group and instructed them to raise their hands. Mr McKernan stated that they were asked if they had seen another gun-man running across the fields. Bobby Douglas, replied "no" and Mr McKernan stated that Bobby was struck across the jaw. He could not recall if he was struck by a fist or a rifle butt. They were then instructed to lie face down on the ground.

[49] After about 10minutes of lying in the field, Mr McKernan stated that he saw Saracens arrive on the Whiterock Road and then more soldiers arrive into the field near Shepherd's Path.

[50] He saw two people taking photographs of what he thought looked like a body lying on the path. The body was 20-30 feet away from him. He did not see any civilians in the area. He further stated that one of the soldiers beside him was cocking his rifle and a shot was fired.

[51] Mr McKernan recalled being in that position for around 65 minutes. According to Mr McKernan, the deceased's body was trailed along the path in the direction of the Whiterock Road and subsequently placed on a stretcher and taken away. He recalled one of the soldiers standing beside them saying: "I'll have his leg when I get into the fort for I had two cousins killed."

[52] They were then informed by the soldiers that they could go. Mr McKernan got up, walked straight towards Ardmonagh Gardens, and did not look back. He did not see any police or military vehicles in Ardmonagh Gardens. He went immediately home and told his parents what had happened and about the body and his mother said that she would contact Father Faul. Mr McKernan stated that he then went to bed. He did not know when his mother spoke to Father Faul, but a couple of days later he was asked to attend a press conference at the chapel with him.

[53] Mr McKernan accepted that he did not see soldiers kick the body of the deceased nor strike the deceased with rifle butts. He further stated that soldiers did not put knees on his own back, or on his neck and no rifle was put to his neck. He was not called "wee fenian bastard" nor did he hear anyone else called that. He stated that he was not threatened by soldiers that they would come to his house and kill him.

[54] In his evidence, admitted under Rule 17, Gerard McKenna stated that he had provided a statement to Father Faul 19th September 1975, a statement to the RUC dated 5th September 1975 and an Inquest Deposition dated 2nd September 1976. The date of the statement given to the RUC appears to have been an error as it pre-dates the death of Leo Norney.

[55] Mr McKenna stated that he had known Leo for about 3 years as they lived near each other and usually hung about at the weekends socializing.

[56] On Saturday 13th September 1975 he described the deceased and himself as probably both being slightly tipsy but not drunk. At around 10.50pm he and the deceased walked past Dunville Park heading towards the taxi stand situated outside the Royal Victoria Hospital. The two were on their way home and Mr McKenna had bought some fish and chips on the Falls Road. On arriving at the taxi stand outside the King Edward Building they met Marcus Quigley. Mr McKenna stated that the deceased then enquired as to which taxi was going to the Whiterock and he witnessed the deceased and Mr Quigley get into a taxi and it drove off country-wards along the Falls Road. He stated that the deceased was going to meet his girlfriend who had been babysitting at her aunt's house. Mr McKenna then took a different taxi and went home by himself.

[57] Mr McKenna described Leo as a fun loving person who liked a joke, he was not a troublemaker or involved in any paramilitary activity. He was of the opinion that Leo was not a member of the provisional IRA or Official IRA or any other paramilitary organisation.

[58] Marcus Quigley gave evidence to the Inquest. He had previously made a statement to Father Faul 19th September 1975, to the RUC 5th October 1975 and given

evidence to the original Inquest. In addition, there was a HET memo of their interaction with Mr Quigley.

[59] He stated that on Saturday 13th September 1975 at approximately 10.55pm he and the deceased took a black taxi from the junction of the Grosvenor Road/Falls Road close to the RVH. They were both going home and the deceased exited the taxi at Shepherd's Path and Mr Quigley exited same at Kelly's bar which Mr Quigley stated was approximately 200yards from where the deceased had got out of the taxi. Mr Quigley stated that just as he was getting out of the taxi he heard about nine shots being fired. He thought the shots were being fired in the Ballymurphy Estate. Mr Quigley continued on home. He learned the following day that the deceased had been shot. Later that evening he discovered that it was being suggested that the deceased had a gun. Mr Quigley went to the police 2 days later after he had spoken with the deceased's mother. Mr Quigley stated that the deceased was not carrying anything when he got into the taxi. Mr Quigley stated that also in the taxi that evening were two women and a man in the back of the taxi and two in the front. He did not know any of these people, but he recalled that there was some "slagging" amongst the occupants particularly the ladies whom he believed were coming from the bingo. He also recalled the taxi being stopped by soldiers and he believed that the checkpoint was at the Ballymurphy Road junction with the Whiterock Road just past McCrory Park.

[60] In her evidence to the Inquest, Ms Diana Hockley, stated that on 13th September 1975, she was 15years old. On that night she had been at the Whiterock GAA Club with Ms Dolores O'Neill. Both were in a band and each Friday and Saturday night the band played at the local Clubs to fundraise for their 1977 St Patrick's Day parade in New York.

[61] Ms Hockley and Ms O'Neill left the Club at around 10pm and walked to Sloan's Working Men's Club to collect a fundraising tin. Following that, they then set off for their homes both living at that time at Norglen Parade. They walked along the Whiterock Road taking a shortcut along Shepherd's Path into Ardmonagh Gardens. Ms Hockley recalled that it was a cold dry dark night. Ms Hockley explained that she is/was short-sighted and was not wearing her glasses at that time. She did not recall seeing anyone else in Shepherd's Path until about half way along same when a soldier stood in front of her and Ms O'Neill.

[62] She stated that there were other soldiers lying in long grass by the path although she was unsure as to how many. She stated that lighting to the path was "ok" as there were lamps on the Whiterock Road and at The Sloan's Working Man's Club. She described the soldier as wearing a uniform, a beret with his face blacked up and speaking with an English accent. They were informed by the soldier that they could proceed no further and to turn around.

[63] As a result, Ms Hockley and Ms O'Neill turned to walk back the way then had come when she heard a shot ring out. She thought that it was very close so they both hid in the long grass. She believed that she heard a man's voice scream or yell and then she heard a second shot straight after. Both stayed in the grass for around 30 minutes before getting up and walking home, although she stated that it could have been less.

[64] Ms Hockley did not know the deceased.

[65] In her evidence to the Inquest, Ms Dolores O'Neill stated that she had never previously provided an account of the incident. On the night in question she would have been 14 years old and was with Diana Hockley nee Donnelly. They were in their band uniforms and had just played in St John's GAA Club in the Whiterock area. They made their way to The Sloan's Working Man's Club in order to collect a fundraising box. It was approaching 11pm and she was anxious about getting home.

[66] On exiting The Sloan's Club she noticed three soldiers lying in the field adjacent to the Club facing towards Shepherd's Path/Turf Lodge. Whilst they startled her initially, Ms O'Neill described how it was normal to see soldiers lying in fields doing what she called "duck patrols". The field had grass 2 feet high and she had no interaction with the soldiers.

[67] As she and Ms Hockley were about to start walking up the Whiterock Road she noticed a black taxi stop adjacent to Shepherd's Path. She stated that she saw the silhouette of a boy with long hair get out of the taxi, put his newspaper under his left arm and pay the taxi driver. She then watched him proceed towards Shepherd's Path. She described the visibility as good with various lampposts dotted about.

[68] Ms O'Neill did not see anyone else at that stage. Once she and Ms Hockley were about 6 feet past the entrance to Glenalina on the opposite side of the road she heard shooting. She clarified in her oral evidence that it may have been a greater distance. She did not recall how many shots were fired but did recall that they were high velocity bullets. There were no gaps in the shooting and she described the shooting as slow and repetitive. She and Ms Hockley took off their accordions and berets and ducked down. She assumed that it was the IRA shooting at soldiers perhaps from a block of flats where she lived. Such gun battles were not unusual.

[69] Ms Hockley could not recall how long the shooting lasted but after the shooting she did recall some neighbours coming out and standing at their front doors.

[70] Eugene Robert (Bobby) Douglas gave evidence to the Inquest. He had provided statements previously to Father Brady on behalf of Father Faul 19th September 1975 and the RUC on 5th October 1975 and a deposition from the original Inquest dated 2nd September 1976 although he had not been required to attend same. I also had an account he provided to HET .

[71] Mr Douglas stated that he did not know Leo Norney. On 13th September 1975 he had been at a disco in St. Thomas's School, Whiterock Road. He was with Thomas McKernan, Kieran Forde and Francis Pyper. All four lived at that time at Norglen Parade.

[72] They all left the disco around 11pm. On leaving they stayed on the Ballymurphy side of Whiterock Road and walked with some girls who left them as they approached The Sloan's Club. At this time, he heard shots and they ducked and waited for a short time before moving on.

[73] All four then walked along the Whiterock Road and crossed onto waste ground between Whiterock Road and Ardmonagh Gardens. After crossing a small river, they came upon some soldiers. They were more than halfway across the field, perhaps $\frac{3}{4}$ of the way towards Ardmonagh Gardens. They were ordered to put their hands up and were searched. They were then told to walk on but after walking around 4 yards another soldier appeared and asked if they had seen another gunman. Mr Douglas replied no and was struck to the face by a soldier knocking him to the ground. He believed that he was slightly knocked out. He was unsure if it was a punch or a rifle butt but thought it was a punch.

[74] The group were then instructed to lie on the ground face down. Francis Pyper stated that there was someone lying close by. Mr Douglas saw soldiers looking at the deceased using flash lamps. The body was face down with longish hair. The body was approximately 15-20 yards away. He saw two soldiers kick the body over onto its back.

[75] A short time later a group of men in civilian clothes arrived and photographed the deceased. Mr Douglas heard a soldier shout "check your rifles" and "as you cock your rifles shout clear." Mr Douglas then saw that as one of the soldiers was cocking his rifle it went off. The soldier was pointing his rifle in the air, in the general direction of Ballymurphy estate.

[76] Mr Douglas also saw more soldiers arrive. He described one soldier having a radio receiver attached to his ear state to the soldier who had discharged his weapon "can you afford ten or twenty pounds" to which the soldier replied "yes". The soldier with the radio receiver then said "say it was a sniper's bullet."

[77] Mr Douglas then saw a person whom he believed to have been an army doctor examine the deceased and then he witnessed the deceased being dragged about fifteen yards towards Ardmonagh Gardens before being placed on a stretcher and placed in a red cross jeep. The group were then let go on their way. They headed towards Ardmonagh Gardens and he saw a few military vehicles there. Mr Douglas was definite that the deceased was dragged towards Ardmonagh Gardens and not Whiterock Road.

[78] Mr Douglas stated that although he didn't complain about being struck by the soldier as he didn't want to put himself in a situation [make things worse for himself] he did tell the police and no further follow up by police occurred.

[79] He accepted that no knees were placed on his back, or on his neck nor was a rifle put to his neck. He further accepted that he did not hear any shouting or words "wee fenian bastards", or a threat to shoot their mothers.

[80] He stated that he did see the body receive one kick but he accepted that the soldiers could have been turning the body of the deceased over with their feet.

[81] In his evidence to the Inquest, Francis Pyper stated that he had previously provided statements to Father Faul (19th September 1975, the RUC 5th October 1975 as well as providing evidence to the original Inquest 2nd September 1976.) the Inquest also had a transcript of comments made by Mr Pyper in a Spotlight Television Programme dated 11th October 2016. Mr Pyper took issue with some parts of his earlier accounts. He had also provided two statements for the purposes of this Inquest.

[82] Mr Pyper explained that he was an alcoholic and that the information he had provided to BBC Spotlight was incorrect.

[83] He stated that on the evening of 13th September 1975 he would have been 14years old and he attended a disco at St. Thomas's school on the Whiterock Road along with Thomas McKernan, Kieran Forde and Bobby (Robert) Douglas. He assumed that prior to 10.30pm, as he had to be home by then, the four of them left the disco. They walked through the houses his route took him past houses and out onto the Ballymurphy Road and then onto the Glenalina Road leading to the main Whiterock Road. At the Whiterock Road, he recalled glancing over towards waste ground and seeing a figure on the path. He then heard 4 shots.

[84] The four then entered the field across the road and went over the stream onto waste ground. He did not think the streetlights were working but described it as being a normal night for the time of year and not raining. They were making their way towards Shepherd's Path and coming over a dip whenever they walked into two soldiers. He thought that there was possibly up to 8 soldiers in the area.

[85] The next thing he recalled was something hitting Bobby Douglas and he fell down. A soldier asked Bobby Douglas if he had seen a gunman and Bobby replied no at which stage the soldier struck Bobby and he fell to the ground.

[86] Mr Pyper then described a soldier grabbing him and forcing him to the ground stating "don't fucking move or I will blow your head off." All four were now on the ground. According to Mr Pyper, the soldiers placed their knees on top of their backs and then onto their necks with their rifles pointing into their necks. The soldiers

were shouting “wee fenian bastards” and stating that they would shoot their mothers and come to their homes and kill them.

[87] He then saw two soldiers dragging something along the path and saw that it was a body whenever torches were shone onto it. He then saw three soldiers at the body with one kicking it and another hitting it with his rifle. He recalled flashes from photographs and he could hear shouting “find the gun, where’s the gun.” One soldier shouted at the group “If I don’t find the gun I will blow your fucking heads off.”

[88] Mr Pyper then described 2 dogs with soldiers being in the field and his friend Kieran panicking. He then heard two shots from behind and recalled the soldiers ratcheting their guns and the soldier beside him fired a shot towards Ballymurphy. The noise was so loud and he was so scared that it caused Mr Pyper to urinate himself.

[89] The group were then ordered to lie face down on the ground which they did. Mr Pyper then heard a big soldier say “clear your rifles”. At this point a soldier let off a shot. Mr Pyper could see that this soldier was pointing his gun in the air and towards Ballymurphy estate. The big soldier then questioned this soldier “can you afford £10 or £20 of a charge. Can you afford it this week?”, to which the soldier replied “aye”. Mr Pyper then saw camera flashes and he could see a body lying on the ground on its back. The soldiers turned the deceased over with their feet. Mr Pyper believed that the soldiers were searching the area and he saw a soldier with a dog in the area.

[90] A red cross ambulance then arrived, and the deceased was trailed to a stretcher placed on it and taken away. Another soldier with an English accent, arrived, ordered the soldiers to empty their guns, and the group were allowed on their way after providing their names and ages.

[91] Mr Pyper described the soldiers who were shouting at the group as having Scottish accents and possibly wearing berets.

[92] Mr Pyper went on to provide details of the parts of his previous accounts that he disputed and in particular about stating on the Spotlight programme that he saw Leo Norney being shot. He stated that was not true (that he witnessed Leo being shot). He explained that due to his alcohol problems his memories of the events had become mixed up and only now that he is no longer drinking is his mind becoming clearer, allowing him to put events into order.

[93] In his evidence to the Inquest, Kieran Forde stated that on 13th September 1975 he was at a disco at St. Thomas’ school on the Whiterock Road along with Thomas McKernan, Bobby Douglas and Frankie Pyper. The group left the disco at approximately 10.50pm. As the group were walking home at the Bull Ring he heard

two shots. The group then walked up the Glenalina Road across Whiterock Road and over a field in the direction of Ardmonagh Gardens. As the group were crossing this field soldiers shone torches on them and ordered them to halt. They were searched and one asked Bobby Douglas if he had seen anyone run across the field. When Mr Douglas replied "no" he was struck by the soldier. The group were ordered to lie on the ground and a soldier knelt beside Mr Forde.

[94] Mr Forde recalled this soldier then cock his rifle and fire a shot in the air. Another soldier then queried if he (that soldier) could afford ten or twenty pounds. The soldier replied that they could blame it on the sniper. Mr Forde then witnessed others take photographs of a body which was lying some ten or fifteen yards away. The soldier beside Mr Forde remarked that he had two cousins killed and if he was not dead then he would go up and finish him off. Mr Forde recalled that the soldier who discharged the shot was called M2 as his name was called by another soldier.

[95] Another soldier then queried how many shots they had fired, and one said five, another said three and another said one which was accidental. A red cross ambulance then arrived, and the deceased was trailed to the stretcher. A short time later the group were allowed to go on their way.

[96] Mrs Karen Cosgrave nee McFarlane gave evidence to the Inquest. She had also given evidence before the original Inquest on 2nd September 1976 in addition to providing statements to Father Faul, 19th September 1975, and the RUC on 5th October 1975.

[97] She stated that she remembered the evening of Saturday, the 13th September 1975. She was babysitting for a friend in Hawthorn Street in the Beechmount area. At approximately 10.45 p.m. she got into a taxi at the corner of Falls Road/Springfield. She remembered that she sat in the rear of the taxi on the right-hand side next the window. There were two other women also seated on the back seat beside her. Two youths sat facing her. Mrs Cosgrave stated that she later recognised one of the passengers as Leo Norney as she subsequently had seen his photograph in the Irish News newspaper two days following his death. She did not know the deceased.

[98] The taxi travelled up the Falls Road and turned into the Whiterock Road and was stopped at a checkpoint operated by soldiers. The check point was situated near to McCrory Park. Everyone got out of the taxi and was searched by the army except a man who was seated in the back and who had a child in his arms. The time at this point was around 10.55 p.m. She stated that she was certain about the time as she wanted to get home before her 11pm curfew as she was already on a warning. She recalled being searched and had a vague recollection of the deceased and his friend being frisked against the graveyard wall. Mrs Cosgrave also recalled the taxi being searched which would not always have been the case.

[99] Everyone got back into the taxi, and they moved off. One of the youths seated in the taxi shouted "Specky" at one of the soldiers and they were called back. The soldier looked into the taxi and asked, "Who said that" One of the women in the back told the soldier that she had said it and the soldiers then let them go on. The taxi travelled on up the Whiterock road and stopped on the left-hand side of the road. Leo Norney got out and paid the taxi fare. They then drove on to the top of the Whiterock Road and the youth who was with Leo Norney got out and she got out. She recalled it being very quiet in terms of traffic. Another woman also got out of the vehicle. She then walked up Dermot Hill Park and heard some shots somewhere not too far away.

[100] Mrs Cosgrave made her statement to police several weeks after the incident at the request of the deceased's mother and she also made a statement to Fr Faul. She disputed ever saying that she only heard one shot.

[101] Mrs Margaret McHugh's evidence was admitted under Rule 17 as she is now deceased. She had also given evidence before the original Inquest on 2nd September 1976. Mrs McHugh recalled 13/9/1975. She stated that she was in a taxi at about 10.55pm. There was a young girl and a woman, two young men and a man with a baby came and filled it up. It left from the corner of the Springfield and Falls Roads about 10.56 and went up the Falls and then the Whiterock Road. Halfway up the Whiterock Road they were stopped and searched by an Army patrol.

[102] Mrs McHugh stated that one of the lads in the taxi was Leo Norney because she recognised him from a photo in the Irish News on Monday morning following the shooting. They had stopped on Shepherds Path and Leo Norney got out there. At the top of the Whiterock Road she got out and heard one loud rifle shot. As soon as she saw the picture in the Irish News she knew he was not a gunman. That afternoon she headed to see his mother and explained to her what had happened. She said Father Faul was there and that she gave a statement to Father Murray or Father Murphy on behalf of Father Faul.

[103] Mrs McHugh stated that she could have been wrong about one shot as there might have been more after she had got home.

[104] Mr Anthony Wilson's evidence was admitted under Rule 17. He had made a statement to the RUC in 1975 and two statements to the Historical Enquiries Team (HET) on 28th September 2011 and 16th July 2012. In his statement dated 28th September he stated "I have been shown a photograph numbered 2 in a blue album. I can say that it depicts where my brother's Mini was parked...The Mini had been parked immediately outside no. 70 whilst the picture depicts it outside No.72 a full car length further back."

[105] He went on to state: "There were actually two bullet holes at the back one either side of the number plate but only one exit hole." I have mentioned above the experts' joint view of only 1 bullet hole to the rear of the car.

[106] In his later statement to HET he stated: "...the Mini was parked slightly above our house at 70 Ardmonagh Gardens. There was an alleyway that runs between our house and No.68. The Mini was parked more or less alongside that alleyway..." and; " I am adamant that there were two bullet holes in the back of the car. Neither of which had been there when we parked the vehicle on the Saturday evening before Leo Norney was killed."

Evidence from the soldiers

[107] Lance/Corporal Mackay, 23 years old at the time, is now deceased. He gave evidence to the original inquest. I had his deposition which contained some manuscript additions, presumably to reflect the answers given by him to questions asked during the 1976 inquest. He had also made a statement to the police on 14th September 1975 which he added to on 8th October 1975.

[108] It should be noted that the four-man patrol have been referred to in the original inquest as Soldiers A, B, C and D. In this inquest they have been referred to as L/Cpl Mackay, M1, M2 and M3. Thus, Soldier A is L/Cpl Mackay, Soldier B is M1, Soldier C is M2 and Soldier D is M3. These ciphers will be used interchangeably throughout the following examination of the soldier's evidence across both inquests.

[109] In his inquest deposition Mr Mackay stated that in 1975 he was a Lance Corporal in the 1st Battalion, Black Watch and was on security duties in Belfast. He was stationed at Fort Monagh and at approximately 10.20pm on 13th September 1975 he left Fort Monagh with a number of other soldiers in order to carry out a patrol of the Turf Lodge area. He advised that they travelled in a vehicle to the upper part of the Whiterock Road and dismounted. There were 12 men in the patrol and they split into three four man patrols. L/Corp Mackay took soldiers M1, M2 and M3.

[110] At 23.08 they moved to the junction of Ardmonagh Way/Ardmonagh Gardens and stopped at the junction. L/Corp. Mackay stated that on their way to Ardmonagh Way he heard a car horn sound somewhere to his left. Being suspicious of this he took his patrol left into Ardmonagh Gardens. He described each soldier being on the alert as there was good street lighting in the area. On moving into Ardmonagh Gardens he stated that he noticed a yellow Cortina car parked on the left-hand side of the street. The patrol passed this car by and further up the street he saw a red Mini parked on the left-hand side facing him. L/Corp. Mackay then stated that as he got within about ten feet from this Mini a single high velocity shot was fired from waste ground to his right. He described seeing a muzzle flash coming from the firing position and that each man in his patrol cocked their weapon as they ran.

[111] As he moved forward about 8 paces L/Corp. Mackay stated that he saw two gunmen appear from a mound of earth on the waste ground between Whiterock Road and Ardmonagh Gardens exactly he said from where he saw the muzzle flash. He said that he clearly saw each of these persons had a rifle. Both appeared to be .303 rifles. The gunmen were about 30/40 meters from his position at this time. Both gunmen paused for a short period and then ran in the general direction of Whiterock Road. He continued to say that he then fired six aimed shots from his self-loading rifle at the gunmen as he was in a standing position. He described Soldier B as firing one shot. The range was 30/40 metres.

[112] L/Corp. Mackay stated that he witnessed one of the gunmen fall to the ground while the other escaped. The patrol moved forward and found a body of a man lying on the ground. (this was the deceased). Leaving Soldiers C and D with the deceased he and Soldier B ran towards the area of the Whiterock Road after the second gunman but he had escaped.

[113] The Company Commander arrived at the scene and on inspection a bullet mark was found to the rear of the red Mini. L/Corp. Mackay did not give any warnings to the gunmen as he said it would have given them time to escape.

[114] The following evidence reflected the statement L/Corp. Mackay provided police on 14th September 1975.

[115] On 8th October L/Corp. Mackay added to the above statement which was also reflected in his inquest deposition that about 10-15 minutes after the deceased was shot a command was given to "make safe from the left". This was directed at soldiers who were giving cover to those at the scene. Each soldier cleared his weapon and on Soldier C's turn he heard a loud bang. L/Corp. Mackay then stated that he ran across and found Soldier C in a nervous state who had accidentally discharged his weapon. He was in a kneeling position with his rifle pointing towards the Whiterock Road. He then described who else was present.

[116] A perusal of L/Corp. Mackay's Personnel file indicated that he held this rank from 21st May 1973 until 4th January 1976. He was an acting Corporal from 7th May 1974 until 9th May 1975. He was sentenced to 3 months imprisonment on 27th May 1975 for an assault on a police officer before coming to join his battalion in Belfast.

[117] Pausing here, I note that L/Corp. Mackay himself passed away on 13th September 2015. One will note that this is the same day (different year) on which Leo Norney died. There has been some speculation that he died by his own act but following enquiries by my legal team I am satisfied that his death was due to natural causes and that L/Cpl Mackay appeared to have several substantial health difficulties prior to his death.

[118] Soldier M2 provided a statement to the RUC on 14th September 1975 which he later added to on 8th October 1975. He similarly provided a statement on 14th September 1975 to the RMP, although he could not recall why he provided two such statements on the same date. He provided a further statement to the RUC on 24th October 1975 regarding an allegation of planting ammunition. There was also available to the Inquest a note from the HET, dated 31st August 2011, some of the contents he took issue with. He also gave evidence before my Inquest on 9th May 2022. His original statements recorded the following details:

[119] On 13th September 1975 M2 was detailed as a member of a four man foot patrol to operate in the Turf Lodge Area. He was with Soldiers A (L/Cpl Mackay), B (M1) and D(M3). At approximately 10.10pm they left Fort Monagh in an armoured vehicle travelled down the Falls Road and into Whiterock Road where they got out. They were all carrying SLR rifles. On exiting the armoured vehicle they went into Whiterock Path then into Ardmonagh Gardens. As they were coming out of Norglen Parade, Soldiers D & B were on one side and he and Soldier A were on the other. As they approached Ardmonagh Way he heard what sounded like a car horn. He saw a Mini car on the same side of the road as he was and he then heard a shot and it sounded like it had hit the Mini. He then heard another shot. He immediately cocked his weapon and he noticed soldiers A & B fire shots in the direction the shooting was coming from. There was a grass bank to his left and he ran to it for cover. Soldier A shouted to follow him and he and Soldier B ran after him. As he ran, Soldier C, saw a body lying on the path and he immediately took up cover and was joined by Sgt Floan.

[120] Following his initial statement to police on 14th September 1975, Soldier C gave an additional statement on 8th October 1975 in which he stated that about ten minutes or so after the shooting of the deceased he had an accidental discharge.

[121] As referenced above, just prior to the original planned commencement date M2 [Soldier C] provided, through his legal team, a further detailed statement dated 19th October 2021.

[122] M2 stated that he enlisted in the army in September 1974 and completed basic training in January 1975, joining the 1st Battalion of the Black Watch in February 1975. He was assigned to 14 Platoon of D Company. He was in NI from July to October 1975 and left the army in 1977 as he "hated" his time in it and "was not cut out for it".

[123] According to M2, Corporal Mackay was the "top man" in the Battalion. He described him as being a "violent person".

[124] M2 stated that he was bullied by other soldiers in 14 Platoon from quite early on and was physically assaulted on an occasion by some soldiers including Mackay. M2 described how he went on a training camp prior to coming to NI where he was

“sent to Coventry” by the platoon and following the training he left for Istanbul with a view to going onto India. However, he returned to his battalion and spent some time in a military jail before joining D Company in Fort Monagh, Belfast.

[125] M2 stated that he continued to endure physical and verbal abuse whilst in Fort Monagh. He explained that he did not complain about his treatment as that was not the “done thing” in Black Watch and that you “just got on with it”. Corporal Mackay subsequently joined them in Fort Monagh due to being in prison in Scotland. M2 shared a room with M1, M3 and Mackay who was the head of their section.

[126] M2 recalled that he M1, M3 and Mackay would have been a four man foot patrol on several occasions prior to 13th September 1975 and he was familiar with the area of Ardmonagh Gardens and Shepherd’s Path, having patrolled them before.

[127] M2 recalled that on the morning of 13th September 1975 after arriving back to Fort Monagh from mobile patrol he heard a high velocity shot and several smaller calibre shots hit the front gate of the fort. Some of the shots went high over his head and no-one was struck or injured in the incident.

[128] Following this incident he went to his room and was approached by Corporal Mackay. M2 recalled Corp. Mackay say that they were going to “waste someone tonight” or words to that effect. He could recall the use of the word “waste”. He took this to mean do someone harm, including kill someone. He initially thought that Mackay was serious but then he thought that no-one would do such a thing and that he was just sounding off as he recalled Mackay being in a really foul mood. M2 replied that he would not be involved and that Mackay must be mad. He believed M1 and M3 were within earshot but he could not recall either of them saying anything at that time.

[129] M2 then recalled being on foot patrol that night walking on Ardmonagh Gardens in the direction of Shepherd’s Path. He was about 20yards behind Corp. Mackay and he assumed M1 and M3 were on the footpath on the other side of the road.

[130] M2 did not recall a car horn going off and was almost sure one did not. He recalled that the street was quite well lit and whilst walking on Ardmonagh Gardens he stated that Corp. Mackay turned and walked towards him, took him by the arm bringing him back up Ardmonagh Gardens towards Shepherd’s Path, up to a metal security fence of a school situated at the end of the street. At the fence, Corp. Mackay instructed M2 to sit down and keep a lookout over Ardmonagh Gardens and M2 sat down with his back to the fence as ordered.

[131] He recalled a red Mini parked on the right side of Ardmonagh Gardens as he looked from his position. M2 was shown a black and white photograph showing the

said Mini parked in Ardmonagh Gardens and he believed that it was parked about three car lengths away from where the photo had it situated, that is, further into Ardmonagh Gardens, parked parallel to the kerb. He did not have a view of Shepherd's Path. A copy of this photograph is appended to these Findings at Appendix A.

[132] According to M2, at this time M1 and Corp. Mackay were both positioned at the corner of the security fence at the start of Shepherd's Path. He did not recall where M3 was at this time. M1 was kneeling with his body pointing in the direction of Shepherd's Path and Corp. Mackay was standing to M1's right as one looked up the path towards Whiterock Road.

[133] M2 stated that Corp. Mackay said something and as he looked up at him, he saw Corp. Mackay fire his rifle in the direction of Shepherd's Path. He fired two quick shots after which there was short pause followed by several further shots. M2 estimated that Corp. Mackay fired five to six shots. He did not recall hearing or witnessing any gunshots in the area prior to the rounds being fired by Corp. Mackay. He then saw M1 pull his rifle over his shoulder, turn his body, point his rifle in the direction of Ardmonagh Gardens and fire a single round which struck the Mini that was parked on Ardmonagh Gardens. He believed this was very soon after the shots fired by Corp. Mackay. He did not hear M1 say anything.

[134] He then recalled Corp. Mackay talking on the radio, perhaps a few seconds later, and then motioned/ordered M2 to follow him and he (Mackay) and M1 ran off up Shepherd's Path towards the Whiterock Road. Corp. Mackay went first, followed by M1 and when he was a few paces onto Shepherd's Path, Corp. Mackay came back towards him and ordered him to take cover in the waste ground on his right.

[135] M2 did what he was ordered and as he jogged onto the waste ground away from the path but in the direction of Whiterock Road he continually looked back and saw Corp. Mackay go back up the path in the Whiterock Road direction.

[136] M2 stated that he could hear a person groaning from the direction of Shepherd's Path. Looking towards the area the groaning was emanating from, M2 witnessed Corp. Mackay point his rifle towards the ground and fired one round. M2 could not see a body from his position and he believed that the round struck the concrete path. Immediately after the shot, he saw and heard Corp. Mackay kick an object on the ground in the area in which he had fired. M2 believed that he was approximately 25-35 yards away from where the round was fired. He did not recall seeing or hearing M1 or M3 or anyone else whenever Corp Mackay fired this round.

[137] At that time M2 thought that a person had been shot. He lay on the waste ground facing away from Shepherd's Path towards the cemetery. More soldiers arrived and they were instructed to clear their weapons. M2 took his magazine off and pulled the trigger having forgotten that there was a round in the chamber. The

rifle fired a round into the air. Corp. Mackay approached him and shouted in answer to the question “who was that?”; “It was M2”. Just prior to this M2 recalled some teenage boys appearing on the waste ground and being stopped by a soldier.

[138] M2 then recalled an ambulance arriving and a body being carried on a stretcher to the ambulance.

[139] According to M2, Corp. Mackay, M1 and M3 and a driver returned to Fort Monagh in a Land Rover and there was no discussion between them. On arriving at the Fort they were taken to a room where officers were present but he could not recall the details of any discussion.

[140] The following morning M2 was approached by Corp. Mackay and instructed to provide a certain narrative about the events the previous night. He knew the version to be provided was false but he feared for his own safety if he did not comply with Corp. Mackay’s instruction. As a result, he did as instructed by Mackay. Although he was also instructed by Mackay not to mention the accidental discharge he did in fact make a statement regarding this on 8th October 1975. He explained that he was told to do so he believed perhaps by a senior officer and that he had been fined by the army in relation to same by the time he came to make the statement.

[141] Pausing here, I do note that the four civilian witnesses in the field would have made statements by this time which included the accidental discharge.

[142] M2 asserted that he had no recollection of giving statements to the RMP or RUC but that the contents of same about the shooting were false although his statement detailing the accidental discharge is correct.

[143] According to M2 his most recent account and evidence to this Inquest is the truth and that he remained silent until now out of fear for his wellbeing in the event of informing on other soldiers. He accepted that he had maintained since September 1975 the version of events that he first gave and that this could have had a big impact on the police investigation.

[144] He did not believe that he would have been sitting in the Inquest giving evidence if he had “grassed up” Mackay, having experienced Mackay’s propensity for violence. He described Mackay as having a malign control over those under his command to the point of being oppressive. M2 further explained that Mackay had influence also over those senior to him and he agreed with the description that he was “aggressive and unpredictable”. He was aware that Mackay was now deceased and he wanted to clear his conscience and he believed that Leo Norney’s family deserved to know the truth as best as he could now recall it. If he could turn the clock back, he would and he was deeply sorry that Leo died and that his family had to suffer.

[145] Soldier B also given the cipher of M1 for the purpose of this Inquest gave evidence in 1976 and before me. I had his deposition from the 1976 inquest together with his statement to police on the 14th September 1975. He was also interviewed by the HET on 11th January 2012 and I had the transcript of that interview.

[146] In his oral evidence M1 could not recall a significant number of issues and invoked his right to privilege against self-incrimination which he was entitled to do.

[147] In his original statement Soldier B stated that in September 1975 he was a Private in D Company 1 Black Watch based at Fort Monagh, Belfast. On Saturday 13th September at approximately 9.40pm he left Fort Monagh as part of a four man foot patrol under Soldier A. They were tasked to do a normal patrol in the Turf Lodge area. His patrol was a sub-unit of a multiple patrol under Sgt Floan. At about 23.08 his patrol was in Ardmonagh Way when he heard a car horn sound a number of times to his left in Ardmonagh Gardens. On turning into Ardmonagh Gardens he noted a yellow Cortina car parked on the left and a red Mini parked further on up also on the left. Both cars were devoid of people. Soldier B described this area as a potential ambush area and they proceeded with caution. He stated that when he was about 10 feet away from the Mini he saw a flash and heard a bang which he immediately recognised as a high velocity shot which was aimed at the patrol. The shot was fired from waste ground between Ardmonagh Gardens and Whiterock Road.

[148] Soldier B explained that he cocked his weapon and ran forward to take up a firing position whenever he saw the silhouette of two men on slight humps like a firing point on a range on the waste ground. Soldier B then heard Soldier A open fire. He himself stated that he fired one single aimed shot at one of the men. He saw one of the men fall and the other run off. The patrol immediately ran to where the deceased was and while Soldiers C and D remained with the body he and soldier A gave chase to the other person which Soldier B saw run towards the Whiterock Road. He got away.

[149] Soldiers B and A then returned to the deceased and he was deployed in an anti-sniper position. Soldier B stated that the distance between where the men fired and a fence that would have provided cover was so short that had they allowed them any time both would have escaped. Soldier B was absolutely sure that he was fired on by these men.

[150] Soldier B also added at a later date to his original statement that about ten minutes or so after the shooting he had an accidental discharge of his weapon when he was in the process of clearing it. He was about 30 meters from the deceased guarding four youths who had been stopped earlier by other soldiers. He then described 3 other soldiers at the scene. He stated he was subsequently fined £60 for his actions.

[151] I have included this evidence but having reflected on same it is clear that this is an error and that Soldier C (M2) was responsible for the accidental discharge.

[152] In his oral evidence M1 when asked by my Counsel, Mr Skelt KC, if the contents of his original statement made in 1975 were true and accurate; he invoked his right to privilege. He further stated that he did not wish to provide an account of events of 13th September 1975.

[153] Excerpts of the HET interview were put to M1 and he further invoked his privilege as regards the truth and accuracy of the HET interview. One such excerpt read as follows:

JW[Interviewer] "Could either you or somebody else. Corporal Mackay maybe, have used your gun to fire a bullet through that car?"

M1 replied in the interview " No chance, no chance whatsoever... Cos I had the rifle with me all the time"

JW " And you wouldn't have done that"

M1 " No chance".

[154] Mr Skelt asked M1 if he had ever discharged his weapon during his time in NI to which he invoked his privilege.

[155] M1 confirmed that he had read the contents of M2's most recent statement and when asked if the contents of that statement were true again M1 invoked his privilege.

[156] M1's criminal record was then put to him. He accepted that he had been convicted of 9 offences a number of which involved the planting of ammunition on innocent civilians. He received a prison sentence of 3 years for same and was discharged from the army. When questioned further about these offences by Ms Doherty KC he could not recall any detail about them although he did say that he regretted them and that he had served his time for them.

[157] As regards his recollection of Corporal Mackay he denied sharing a room with him in Fort Monagh and he could not say anything about his character. He further could not recall being afraid of him and he did not recall Corporal Mackay state that he was going to "waste" someone that night and that if he had and thought that it was a serious remark he would have acted upon it.

[158] M3 also known as Soldier D did not cooperate with the Inquest. He was ultimately excused from attending the Inquest on medical grounds following an unsuccessful attempt to compel his attendance by applying to the High Court for a subpoena to be issued. Notwithstanding this non-attendance, I had his witness deposition which he provided to the original Inquest together with a typed note of

his additional oral evidence at that Inquest, a note of an interview conducted with M3 by the HET on 4th September 2012, an MOD Staff Memo, dated 19th September 1975, which provided further accounts of M3's recollection of events. I also had a statement made after caution on 25th October 1975 made to police investigating offences of planting ammunition on members of the public.

[159] I admitted M3's deposition under Rule 17. It is dated 2nd September 1976. In that he states that he was a Private Soldier serving at that time with his unit at Fort Monagh on a four month emergency tour.

"About 22.10 hours Sat 13 Sep 75, I was a member of a four man foot patrol comprising Soldier A (Patrol Commander) and Soldiers C and B. We were tasked to carry out a "moving lurk" patrol in the North Turf Lodge area. About 2300 hrs, 2305 hrs the patrol was at the junction of Norglen Parade and Ardmonagh Way, Belfast, when I heard the sound of a car horn being sounded. At this time I was on the rear right of the patrol, walking backwards with Soldier B leading. Soldier A was opposite Soldier B and C was behind him. When I crossed the road I saw a blue Ford Cortina parked opposite me. The patrol commander ignored this vehicle and continued to move towards the top of the dead end where a red Austin Mini was parked about ten feet from the end of the road on the left hand side facing towards me. Soldier A was about ten feet from the vehicle when I heard a shot coming from behind me. That is from the top of the dead end toward the patrol. The bang from the weapon was immediately followed by a thump. I believe the shot struck the mini. I instinctively turned to face my front and I saw two men running towards Whiterock Road, along the footpath leading from Ardmonagh Gardens. One of the men stopped for a brief moment as though to see what he had achieved. I saw Soldier A start to fire from his weapon from the standing position and Soldier B fire one shot from the kneeling position. The gunman appeared to spin round after the first shot then he took a few steps and fell to the ground. I did not see the other gunman after my patrol had fired their first shot. I do not know whether Soldier A or Soldier B fired first. The patrol then moved up to the body and I moved forward a few yards on to the waste ground and took up a defensive position facing Ardmonagh Gardens. I remained in this position until after the body was removed in an army ambulance from Fort Monagh."

[160] M3 then proceeded in his evidence to the original Inquest to state as follows:

"When I turned round I had a good view over the waste ground...The street lighting was not too bad...I could see the figures only as figures... They were in my view for a very short time. Not long enough for me to cock my rifle and fire...I heard one shot and then shots by A and B before I turned round...One figure stopped to see what he had achieved and he was hit.. The other picked

up his rifle before going off (what? He was running away)...I ran forward but not as far as the body-about five yards from it. I had no difficulty in seeing where the body was lying. I mark on the map, C6, where the body was with an x...I was about 10 or 11 feet from the mound for which I have put a circle on C6.. The light was not good there. I saw the weapons. They were rifles. I am sure they each had weapons. The second man picked up that of the man who was shot, even though he was under fire... He was protected by the corner of the fence, though there was a distance when he was exposed...I am certain there was two weapons. Other members of the patrol gave chase but the weapons were never recovered and the other man never apprehended... The mound would have given a reasonable amount of cover, though it would not cover a man to his waist. If a man were lying you could not see him. When I looked neither of the men were lying...I did not see any strikes or flashes...The man who was shot took two or three steps and then turned and then was struck and bired (spun round). He was hit when turning and turned back again. I would expect the bullets to have hit his shoulder or hip and to have gone from front to back... I was nervous at the time, but I do not think I am mistaken in what I saw." In answer to a question from Mr Gillen at the Inquest M3 replied: " I cannot be certain where the bullets would have struck him as he was moving."

[161] Retired Brigadier, M4 gave evidence to the Inquest. He had provided a statement to police on 8th October 1975, a deposition to the original Inquest (being a copy of his statement) and his commentary to HET in 2012.

[162] He explained that he joined the Black Watch Regiment in 1959 and had been the Company Commander of D Company from March 1974. He believed that this would have been for a period of two years.

[163] In his 1975 statement he noted that at about 11.15pm on 13th September 1975 he attended the scene of a reported shooting incident at Shepherd's Path/Ardmonagh Gardens. On arrival he spoke with an N.C.O and he pointed to the body of a male youth lying half on the path and half on the grass. The N.C.O. informed M4 briefly of the circumstances of the shooting.

[164] Shortly afterwards he ordered the weapons of the soldiers at the scene to be cleared being the standard procedure in order to prevent an accidental discharge. As he was standing beside the body he heard a shot being discharged which seemed to be about 20yards away from him. He was advised that it was an accidental discharge by a soldier.

[165] In his oral evidence M4 could not recall how he had been made aware of the incident or indeed anything regarding the incident. He assumed others would have accompanied him to the scene nor could he recall a Mini car at the scene.

[166] He advised that he had no concerns at the time that this may have been a suspicious incident and that he believed what he was informed about the incident. He stated that he would not have been aware of local sentiment on the ground and he did not read the local papers.

[167] As regards Lance Corporal Mackay, M4 did not recall any concerns being expressed to him about L/Corp Mackay. Nor was he ever made aware of any bullying issues.

[168] He explained that he arrived at the scene at 11.15pm on the night in question and assumed that he walked to it. He could not recall how he became aware of the incident nor what his initial thoughts were on arriving at the scene. He did not hear any shots himself.

[169] In his evidence to the Inquest, Retired Brigadier, M19 stated that he joined the army in 1966 and in 1975 he held the rank of Captain and was the Adjutant of the 1st Battalion, the Black Watch. As Adjutant he was the chief of staff for the Commanding Officer and responsible for administration of discipline and would liaise with RMP and civilian police if there were any matters requiring investigation.

[170] He explained that in September 1975 the battalion was on an emergency 4-month tour of Belfast based at Fort Monagh Barracks.

[171] On 13th September 1975 he was not out on the ground but was at Fort Monagh. He was informed of a contact report and attended the scene with the Commanding officer and also he believed the Regimental Sergeant Major. Also in attendance would have been the Company Commander and the Company Sergeant Major. He did recall seeing the body of a man lying on the road or pavement but was unable to state where exactly or in what position. He could not recall whom he may have spoken to at the scene nor could he recall seeing anyone approach the body, photographers or dog handlers.

[172] He explained that it would have been policy for a cordon to have been set up to secure the scene but he could not recall who gave that order. He advised that the cordon would have been set up by soldiers and the area initially searched by soldiers looking to ensure that the area was safe. M19 accepted that the location of spent cartridges could on occasions assist in determining the position of someone who had fired the shots and that it would be important to leave the cartridges where they fell.

[173] I note that none were found at the scene.

[174] M19 was unaware that the mini had been removed from the scene and he was not involved in the investigation around the death but for ensuring that the soldiers were made available for interview and reporting to the CO.

[175] He explained that on return from the scene to Fort Monagh he would have reported the matter by telephone to the RMP.

[176] As regards Lance Corporal Mackay, he was known to M19 in part due to his disciplinary record but also as it was his job to know his officers and NCOs. He described L/Corp. Mackay as a strong personality but could not say that he was a bully. He was a professional NCO with a prominent personality.

[177] Lance Corporal Mackay had been convicted of the offence of "wounding" amongst other offences and sentenced to 3 months in prison on 25th May 1975. M19 explained that following L/Corporal Mackay's release from prison and returning to his Company in Belfast. He [M19] would have reported the civil conviction to the Commanding Officer and entered it into his record. The Commanding officer would have interviewed L/Corp. Mackay on his return to the Company and a decision taken by the CO about whether or not he should be discharged from the army.

[178] An assessment of L/Corporal Mackay in his Personnel file recorded the following:

"He is a very strong character who acts with great determination when he has decided on a particular course of action. Men follow him even though it must be clear to them that he is leading them in the wrong direction. Too frequently his moral judgements and personal standards have been shown to be unacceptable both to society and in the army. He is meticulously clean and tidy."

[179] As regards L/Corporal Mackay being in charge of the 4 man patrol on the night in question, M19 assumed that the Chain of Command had felt that he was qualified and suitable to be the commander.

[180] M19 was also aware that L/Corporal Mackay had been arrested and subsequently convicted of planting ammunition on innocent civilians.

[181] In his evidence to the Inquest Soldier M18 stated that he joined the army in 1973 and in 1975 he commanded 14 platoon in D Company of 1 Black Watch Regiment. He outlined that there were 3 platoons in D Company namely 13,14 and 15. 14 platoon was divided into two and Sgt Floan (deceased) commanded that section whilst M18 commanded the other half. Corporal Mackay was within Sgt Floan's section. He described Mackay as "smart and powerful". M4 was the Commanding Officer of D Company.

[182] At that time they were the only regiment occupying Fort Monagh and this was M18s second tour. He described his training prior to deployment to Belfast and felt that it was realistic.

[183] On 13th September 1975 14 Platoon were on patrol duties. M18 explained that he and Sgt Floan would take it in turns to go out on patrol which was tiring and

draining. He believed that Sgt Floan would have been on “lurks” where the soldiers would lie-up in an area and watch what was going on.

[184] He explained that whenever the incident involving the deceased occurred he was in Fort Monagh. He did not hear the shots and once he was aware of the incident he and his patrol made their way to the scene which would have taken around 15-20 minutes allowing for them to ready their kit and receive a briefing.

[185] Although M18 had no recall about this scene, he stated that it would have been normal procedure to see the Company Commander to inform him where he had set up the Incident Control Point (ICP). All agencies would then report to this point.

[186] M18 stated that he put soldiers around a certain area to create a ‘cordon effect’. They did not keep a scene log of people entering the scene and he was unaware of how long he was holding the cordon for and he had no knowledge of the mini vehicle.

[187] M18 also described how the communications between two different regiments operated and the complexities around that.

[188] He also explained the procedure around ammunition checks. These would have occurred once or twice per week where the magazines would have been checked or soldiers would have been instructed to lay out their ammunition on their beds and same would have been counted by M18 or by his Sergeant.

[189] As regards L/Corp. Mackay, M18 explained that a soldier who had been involved in an incident which resulted in going to prison then they would normally have been discharged from the army. He went on to explain that MacKay came top of his NCO cadre in Hong Kong and that may have been the reason why the Company Commander felt he deserved a second chance. He also believed that the RSM and Brigade HQ in Colchester would have been involved in the decision to retain MacKay in the army.

[190] He was unaware that fellow soldiers had considered/described Mackay as being a bully and he stated that he would not have been aware of everything going on within his platoon and nothing was brought to his attention at the time. He did state that Mackay would do a job efficiently when asked and that he was professional and smart.

[191] M18 confirmed that Leo Norney was not known to him prior to this incident.

[192] M61 gave evidence to the Inquest. In addition, he had made a self-prepared statement dated 22nd February 2021, a statement to CSNI investigator, dated 25th April 2021 and had been involved in a number of email exchanges with the solicitor representing the NOK as well as a telephone communication with that solicitor.

[193] M61 explained that he was not present at the scene on the night in question. He was in Fort Monagh on stand-by. He was a very good friend of L/Corp. Mackay's and had been best man at his wedding. He was unaware of L/Corp. Mackay joining the Tour late and on the night in question he was on the scene within 5-10 minutes of hearing the shots. His briefing was that a gunman had opened fire on a patrol and missed, the patrol returned fire killing one gunman whilst the other escaped. His orders were to search the area for the weapon and the ejected cartridge and he confirmed that nothing was found. M61 stated that due to his gut instinct he felt that the story being presented was false.

[194] At the scene he saw the Company Commander but no police and the body had been removed. He and other soldiers, he thought about 8 in number, formed a line across the waste ground east of St Aidan's school about half way between Ardmonagh Gardens and Whiterock Road and walked towards Ardmonagh Gardens searching for the weapon and any cartridges.

[195] As regards L/Corp. Mackay, M61 agreed with the description that he was a man of contradictions. He was aggressive and unpredictable but he could also be loyal particularly to his fellow soldiers. M61 stated that several days after the shooting he confronted L/Corp. Mackay about it and he gave M61 the story about being fired at by a gunman. According to M61 he told MacKay that that was rubbish and that he did not believe there had been any gunmen. This conversation got heated and according to M61, MacKay stated that it had been an accident but that he had to fire through a car window to cover up the accident.

[196] M61 met L/Corp. Mackay again in 1991 and Mackay confirmed that the patrol had not come under fire and that he [Mackay] had fired a round through a car windscreen up the road towards Ardmonagh Gardens as proof of incoming fire and stated that it was an accident. M61 took accident to mean accidental discharge and that Mackay said accidental discharge at one point in their conversations also.

[197] According to M61, Mackay never admitted to this accidental discharge as he was in line for promotion and potentially a medal which a mistake or an accident would have put paid to. M61 was of the view that if it had not been an accident L/Corp. Mackay would not have told him as much.

[198] M61 was of the view that the deceased was "an innocent young man in the wrong place at the wrong time."

[199] William Davidson gave evidence to the Inquest. He began his army life in the Junior Leaders Battalion from 1972-73 and then joined the 1st Battalion Black Watch Regiment (BW) in 1974. He left the army aged 21 in 1977. September 1975 was his second tour of duty in NI and he also was of the view that his training was "faultless."

[200] On the 1975 tour the areas his battalion were responsible for stretched from Turf Lodge, Falls Road to RUC Andersonstown. The average age of his company was 19 years old.

[201] Mr Davidson was unsure the time of the incident involving the deceased but was aware that it was late at night and he recalled the shots being fired. He was in the camp and heard a couple of shots followed by a gap and then some more. He recalled hearing heavy calibre rounds being fired from a rifle. According to Mr Davidson it could have been one rifle or more than one. As soon as he heard the shots he readied himself to go back out on patrol. He was put on a four man patrol and was taken to about 50 feet from the deceased's body. He could not see clearly but he knew that what he saw was a body. His patrol was facing away from the scene in order to protect it.

[202] As regards communications, Mr Davidson explained that each Patrol Commander had a walkie-talkie which allowed them to communicate with soldiers within their own company. According to him there was no ability to communicate with anyone outside the company including other Regiments. Both the coverage and sound quality was poor. He was taken to a radio log entry dated 13th September 1975 and explained that it was from 42 C i.e. Delta (4) 2nd Platoon (2) Charlie (C) 3rd patrol. He was of the view that the patrol leader would have the radio, in this instance, L/Corp. Mackay.

[203] Mr Davidson described seeing Basil Mackay a couple of days later. By that stage the soldier's account of two people attacking the patrol, one armed with a rifle and one getting away with the weapon was being told by everyone. Mr Davidson stated that he immediately had his suspicions about this story. He himself was the best marksman in the battalion and Mackay was above average. The scenario presented of a gunman running away towards Whiterock (more or less in a straight line) and having time to pick up a rifle and not being shot was questionable.

[204] Mr Davidson described Mackay as being a person who liked a fight and one who would not back down but not a bully. He was one of the best soldiers in his company, smart, knowledgeable and someone you would want on your side.

[205] Mr Davidson then described an encounter with Mackay many years later. They met up in 1992/93 after Mackay had made telephone contact with Mr Davidson. They met up in a local pub and chatted about different things. Mr Davidson told him that he wasn't convinced about the story concerning Leo Norney's death and according to Mr Davidson, Mackay agreed stating that he had been killed by an accidental discharge from his patrol. He didn't say who was responsible, nor did he deny that it was him. He confirmed that the original story of two gunmen was untrue and that he had to think quickly as to how to get out of the situation fearing going to jail. The solution according to Mr Davidson was that Mackay went to where

the deceased had been standing and fired his weapon from there. Mr Davidson stated that he did not push Mackay any further on the matter.

[206] Mr Davidson explained that at that time the patrol had one sight providing 4 times magnification which was fixed to a rifle and therefore to use the sight the rifle would have been in a firing position but that Mackay did not tell him the rifle was in the firing position when the shot was discharged.

[207] According to Mr Davidson there would have been no reason for Mackay to admit to him about the accidental discharge and taking action after the shooting to look like the patrol had been fired upon, if it had not been true. Furthermore, if the shooting had not been an accident there would have been no point in Mackay telling Mr Davidson that.

[208] As regards any intelligence to suggest that Leo Norney was involved in paramilitary activity, Mr Davidson stated that there was no such indication that Leo was involved in anything and that he had never heard of him prior to the incident. He further stated that "we all knew the players in our local area and around Belfast. Army and RUC intelligence left a lot to be desired but we knew who was in the IRA and this did not include Leo Norney."

[209] The late Sergeant Floan's evidence was admitted under Rule 17. At the time he was a Sergeant in the 1st Battalion the Black Watch. On 13th September 1975 he was in command of a multiple foot patrol operating in the Turf Lodge area. He stated that the original patrol consisted of 12 men but it was then split into 3 groups of 4 men patrols. At approximately 11.08pm he was in the area of Norglen Parade whenever he heard a single shot followed by a number of other shots. He immediately took his patrol to the area of Ardmonagh Gardens and linked up with lance Corporal MacKay and his patrol. On arrival he learnt that a person had been shot dead. He set up a cordon of soldiers in the general area and took charge of the scene until the O.C. arrived. He stated that during that time no shots were fired by any soldier and the body was not abused.

[210] According to Sgt. Floan, approximately 10-15minutes after arriving at the scene he ordered members of the patrol to clear their weapons. As each soldier cleared their weapon he shouted out his name and reported that the rifle was clear. The fourth person to do this was soldier M2 and as he did so he had an accidental discharge. M2 was some 30-40 meters from the deceased's body and his rifle was pointing into the air at the time and in the direction of the Whiterock Road.

[211] In his evidence to the Inquest, M20 stated that he joined the military in 1959 and after basic training joined 1 Black Watch Regiment. In 1975 he held the rank of Warrant Officer Class 2 and was the Company Sergeant Major for D Company. He had made a statement to CSNI investigator dated 25th August 21 and a statement on

7th September 1976 but could not explain why it took a year post the shooting for him to make his first statement.

[212] On 13th September 1975 he was on foot patrol in Andersonstown area. That night he heard 3 or 4 shots coming from the Turf Lodge area. He was then alerted by the radio operator that there had been a "Contact" transmission. He explained that he and the company commander would be required to attend the scene of any shootings to assess the situation. They travelled to the scene in a vehicle.

[213] As regards communications, he was of the opinion that it was not possible to hear transmissions from other Regiments operating in close proximity to a different Regiment.

[214] At the scene he was aware that there was the body of a male. He and M4 obtained a debrief from Mackay but he could not at this remove recall what was said. He did recall that the body was near a path next to waste ground at the scene. He instructed Sgt Floan to set up a cordon to protect the area for forensic checks.

[215] As regards a soldier having served a prison sentence he believed that if a soldier had been in prison then he should not be soldiering and that was his understanding of the army policy. He was of the view that placing Mackay in charge of the patrol "wasn't right". He believed that he may have dealt with one case of Mackay and bullying before coming to NI and he further stated that he had no misgivings about the account provided regarding the fatal shooting.

[216] M20 initially did not recall the Mini vehicle but he did on reading his disclosure. He could not recall who took or ordered the vehicle to be taken to the Fort.

[217] He explained that he searched the area for a weapon and nothing was found. No empty cartridges were located although he did not recall specifically looking for same. He did believe that the grass on the waste ground was long and it was dark which did not assist in trying to locate spent cartridges. He believed that there was one negligent discharge whilst he was there.

[218] M20 explained that tracker dogs were brought in and they would have been used to follow the scent of a human being.

[219] M62 provided evidence to the Inquest. He joined the military in 1962 as a commissioned officer and took up a post with Army Legal Services. In 1975 he was a Lieutenant Colonel in charge of the legal office for Headquarters NI based at Thiepval Barracks, Lisburn.

[220] He did not attend the scene of Leo Norney's death and he never met any of soldiers from 1 Black Watch Regiment involved in the death or with the planting of

ammunition. He completed a report dated 2nd September 1976 which he did not recall but it appears that he was fact reporting from the original inquest.

[221] In relation to a soldier who went to prison M62 was of the opinion that if a soldier went to jail, he left the army, "end of story". He believed that this was common practice and he found it hard to believe that L/Corp. MacKay remained in the army after serving a prison sentence.

Police Evidence

[222] Former Detective Superintendent CID, Alan Simpson, gave evidence to the Inquest. He was a D/Sergeant in 1975. He explained that he joined the police in 1970 and CID in 1972 based at Springfield Road RUC station in west Belfast. He retired early from the police on medical grounds.

[223] Springfield Road was the Divisional Headquarters for "B" Division and comprised 3 sub-divisions. Each sub-division was headed up by a Detective Inspector with Detective Chief Inspector Leo McBrien overseeing all three units.

[224] At least two members of the army's Special Investigation Branch (SIB) were attached to them.

[225] Former DS Simpson stated that whenever Leo was shot, he must have been off duty as the scene was visited by DI Rawson, and DCons Logan, Gibbons and Patterson. On reporting for duty, the following day, he was instructed to take charge of the investigation. He largely carried out the investigation on his own as he did not have a team of detectives, but he did have assistance when needed. He and two fellow officers took statements from three of the soldiers, namely L/Cpl Mackay, M1 and M2. He also recorded a witness statement from M2 regarding an accidental discharge.

[226] Former DS Simpson completed his investigation and submitted a file to the DPP which in turn directed "no prosecution". In addition, on 26th & 27th October 1975 he submitted further reports to DCI McBrien regarding the planting of ammunition on innocent motorists by the same unit of soldiers involved when Leo Norney came by his death. He was of the view that there was strong evidence of corruption within this platoon, and he therefore thought that the DPP should be made aware of same in case the DPP wanted to revisit the "no prosecution" decision as regards the death of the deceased. He submitted a further two page report to DCI McBrien in May 1976, prepared a deposition for the Inquest in 1976 and was spoken to by HET in June 2012.

[227] He was of the view from around day 3 of his investigation and remains of the view that the deceased, Leo Norney, was innocent and that he stated as much in his evidence to the original Inquest.

[228] Former DS Simpson explained that the deceased's body would have been taken to Springfield Road RUC station as the general area of Ardmonagh would have been hostile to police and army at that time. Death had to be certified by a doctor and the Regimental medical officer attached to Black Watch at Fort Monagh was a State Registered Nurse, not a doctor. A Dr Irwin subsequently attended at Springfield Road RUC station and certified death. A scenes of crime officer, Constable McCormick, then swabbed the areas of the deceased's body for evidence of firearms residue and fingerprints were taken. The deceased was later taken to the mortuary at Forster Green Hospital.

[229] He further explained that once it became public knowledge that the deceased's body had initially been taken to the police station allegations surfaced that the reason for this was to allow for the body to be abused as injuries were found on the deceased's hands when he was returned to the family. [I will return to this aspect later.]

[230] Following on from this a Force Order was issued that in future the body of a deceased person should not be brought to a police station.

[231] As regards speaking with the soldiers after the shooting he explained that it seemed to have been a genuine shooting attack on the army whereby the soldiers responded and shot an innocent man. He arranged via the SIB officers to speak with the soldiers according to the arrangements in place at that time.

[232] DS Simpson explained that he himself did not attend the scene but that he was familiar with the area and he relied heavily on experts such as the Pathologist, Dr Press and SOCO and the Forensic Scientist. He had no concerns regarding the possibility of inconsistencies in L/Corpl. Mackay's account and the pathology evidence.

[233] As regards the removal of the red Mini car from the scene, DS Simpson stated that it was either keep the car in its original position under guard all night or remove it to a place of safety pending forensic examination. DI Rawson made the decision to remove the car and it was escorted by police to Fort Monagh and was subsequently examined by Constable Taylor (SOCO) on 14th September 1975 and photographed.

[234] Constable Taylor provided a report to DS Simpson of his findings and on afternoon of 14th September 1975 the car was returned to its approximate original position outside number 70 Ardmonagh Gardens. From where the car was parked, he was pointed out the firing point by one of the soldiers involved. The distance to this point was approximately 45 yards away in an area where there was a slight hump on the ground.

[235] DS Simpson accepted that bullet fragments would be important/vital as they could be forensically examined. In his report to his Det. Chief Inspector at that time

he has recorded "No fragments of bullet were discovered which would assist in the identification of the weapon used..." His attention was drawn to a report of Sgt. Crawford SIB officer dated 19th September 1975 in which he stated;" The bullet head had fragmented on impact and it is therefore impossible to determine what calibre of weapon was used. *However, several small fragments were recovered and are being submitted for forensic examination...*" [my emphasis].

[236] However, in a further undated report from Sgt. Crawford he states: "RUC/SOCO Knock Road, Belfast, examined the Mini in order to recover the bullet which had entered it. ...*a search of the interior failed to reveal any fragments of the bullet...*" [again, my emphasis].

[237] Former DS Simpson stated that he was only aware of the second report and he could not explain the inconsistency.

[238] He was then referred to the evidence of the SOCO, Const. Taylor from the original Inquest, who stated: "I think the bullet would have been fired from an area of the school grounds." DS Simpson explained that this evidence was entirely new to him.

[239] In addition, a note from Army Legal Services dated 2nd September 1975 regarding the evidence given at the original Inquest stated:

"The scenes of crime officer gave evidence... He stated that when he examined the Mini he found the trajectory of the bullet but could find no fragmentation from the bullet. *He concluded from this that someone must have removed the bullet fragments...*" [my emphasis].

[240] That evidence was also news to DS Simpson.

[241] He explained that no further investigative steps were taken and that he did not investigate the possibility that the soldiers had picked up the bullet casings at the scene.

[242] DS Simpson stated that he took the view that the accidental discharge had caused the bullet hole to the Mini and he was satisfied that the Mini had been properly replaced at the scene as Constable Taylor was happy with same.

[243] He explained that he was horrified when he heard that allegations that the deceased's body had been trailed along the ground.

[244] DCI McBrien, whose evidence was admitted under Rule 17, stated in an internal police report that: "I found during my interviews with Corporal Mackay that he was a violent (probably the most violent I have ever interviewed), hard ruthless bully who would stop at nothing to achieve his aims...He gave me the impression that he would be capable of using practically any method of bringing himself under favourable notice... *I am of the opinion that Mackay would have been*

capable of killing Norney in cold blood but I have not the slightest evidence to back this opinion.”

[245] Former police Sergeant David Teeney’s evidence was admitted under Rule 17. He had no recollection of the case at all and he could not recall carrying out any investigations in connection with the matter nor attending the original Inquest.

[246] Former Detective Constable Logan’s evidence was admitted under Rule 17. He was stationed at Springfield Road RUC station at the time. At approximately 11.40pm on Saturday 13th September 1975, accompanied by other police he arrived at the scene of a fatal shooting which had apparently taken place on the area of waste ground between Ardmonagh Gardens and Whiterock Road. On arrival he found a number of soldiers in the area and was shown the body of a youth which was lying close to a flagged pathway. This pathway ran between Whiterock Road and Ardmonagh Gardens. [Shepherd’s Path]. The body was lying face downwards with its head pointing towards railings at an angle of approximately 45degrees.

[247] According to his evidence, DC Logan stated that the body was placed on a stretcher, and he accompanied it the Springfield Road RUC station where it was placed in the Inspector’s office and examined by Dr Irwin at 12.30am.

[248] At the original Inquest he stated that he saw the hands of the deceased and that there were cuts on one of the fingers of one of the hands when he first arrived. He further stated that if it had appeared that the body had been abused, he would have instigated an immediate enquiry.

[249] SOCO Constable Taylor’s evidence was admitted under Rule 17 as was his original report. In his report he stated:

“ In the boot lid of the car I found an entrance bullet hole of approximately 8mm in diameter. From this entrance hole a path could be traced through seating, dashboard, and engine compartment to where the bullet exited to the offside of the front offside indicator lamp. A search of the interior of the car failed to reveal any fragments of the bullet/jacket. Damage to the vehicle was consistent with having been caused by a high velocity bullet of approximate calibre .30...”

It continues:

“At 3.30pm on 14th September 1975 I examined the scene of Norney’s death and again was accompanied by Sergeant Penny [police photographer]. The car mentioned earlier was returned to its approximate original position by members of the patrol which was fired on. This was outside 70 Ardmonagh Gardens. From where the car was parked I was pointed out the firing point by one of the soldiers involved. The distance to this point was approximately 45

yards and is shown as a hump in the lower left quarter of Photograph 1. [The Mound]. A search of this area failed to reveal any spent cases.”

[250] Former Detective Sergeant Ivan Morrison’s (deceased) evidence was admitted under Rule 17. He stated that he had interviewed Soldier B (M1) in connection with the shooting and that “B told me he did not see any weapon at any time on these two men.”

[251] Mr Dave Hart’s evidence was admitted as per Rule 17. He was an Investigating Officer with the Historical Enquiries Team (HET) and was involved in reviewing this death. He stated in relation to a query as to whether or not he was aware of any intelligence with regards to the deceased being a gunman or linked to any paramilitary group at the time of his death, that:

“ There was absolutely no intelligence to suggest this was the case that I was aware of...”

Experts

[252] Ms Ann Kiernan, Forensic Scientist, was retained on behalf of CSNI and provided a report dated 20th May 2021.

[253] Mr Mark Mastaglio & Ms Angela Shaw were retained by the NOK and provided a report dated 24th May 2021.

[254] At my direction the above-named experts met and below I have reproduced the minute of that meeting.

[255] Ms Kiernan summarised that the deceased was fatally wounded when he sustained three gunshots to the body from a high velocity weapon(s) fired by one or two military personnel. She opined that the sequence of the bullet wounds could not be scientifically determined but that the “pathway of the bullets that struck the trunk of Mr Norney’s body would indicate that he was either (1) facing towards the soldiers and having been struck by a bullet, he turned away, collapsed forwards towards the ground where he was hit by a second bullet or (2) he may have reacted to a shot fired in his direction, turned away from the soldiers whilst ducking/leaning forward towards the ground, when he was struck by the first bullet to the left shoulder, and then turned back again, where he was struck by a second bullet to the abdomen. Mr Norney also had an injury associated with a third bullet/bullet fragment strike to the right arm...”

[256] Given the fact that the Mini had been moved, examined and then repositioned, Ms Kiernan was of the view that it was now “impossible to ascertain a true trajectory of the shot that struck the Mini.”

[257] She did go on to opine that depending on the precise position and orientation of the parked Mini that it would be possible that a shot could have been fired from

an area of the wasteland but not as far away as the “mound” but rather from a shooter positioned closer to Ardmonagh Gardens and adjacent to the fence line. Alternatively, she stated that a shot could have been fired from/through the fence line within the school grounds, provided the bullet was fired between a gap in the fence railings.

[258] The ballistic experts agreed the following:

Wound ballistics

1. Leo Norney was shot three times; one bullet struck the rear of his left shoulder, another the right side of his abdomen and another his right forearm.
2. It is not possible to determine from the wound ballistics the order in which these shots were discharged.
3. The size of the entry wounds and the extent of the bullet related injuries are entirely consistent with having been caused by 7.62x51mm, or similar calibre ammunition.
4. The size and shape of the entry wounds indicated that they had been caused by direct shots and not by ricocheting bullets or by bullet fragments.
5. The wounds to the shoulder and abdomen were not caused by the bullet that struck Mr Norney’s right arm.
6. It is not possible to infer a range of fire, bar that the injuries were not caused by contact shots.
7. We have seen no evidence to support the proposition that there was any soot/blackening or propellant deposition on Mr Norney’s hands or face caused by him having discharged a firearm.
8. The bullet that struck the rear of the left shoulder had travelled downwards, back to front and to the right with respect to Mr Norney; this could be explained if he was in a state of collapse or whilst he was ‘on all fours’ when he received this injury.
9. However, it is not possible from the wound ballistics to precisely determine Mr Norney’s posture when he was shot.
10. It can, however, be determined that when he was shot in the abdomen and left shoulder that he was facing the direction from where the shots had been discharged.

Scene examination

11. The scene was visited by RUC SOCO Constable Taylor, and DIFS Forensic Scientists Victor Beavis and James Wallace, and members of the RUC Mapping section.
12. Mr Wallace observed damage to the metal school fence which he attributed to possible bullet strike. However, no photographs pertaining to this alleged bullet damage were disclosed to us.
13. Mr Wallace took swabs from this damage, and they were analysed, as outlined by AS, who will be able to assist the Court in this issue and any other pertinent gunshot residue (GSR)/Firearms Chemistry matters
14. An Austin Mini, Registration 7536KZ, had apparent bullet perforation damage to its rear nearside. The car was removed from the scene and examined by Constable Taylor.
15. The Mini was then 'repositioned' at the scene however the exact position and orientation of the Mini when it sustained the apparent bullet damage cannot be precisely determined.
16. Mr Wallace, examined the repositioned Mini and concluded that the bullet had travelled, through the car with a slight upward path, it had then struck the steering column, was deflected downwards, then passed through right side of engine compartment, and exited beside the front right indicator lamp.
17. The bullet entrance to the Mini is consistent with a nominal 0.30 calibre bullet, which includes 7.62x51 NATO, 30-06. 0.303 and 0.308 Winchester.
18. The bullet entrance to the Mini had characteristics which could support an approximately orthogonal strike, or a slightly angled one, however due to insufficient photographs and poor scene recording of this entrance hole, the trajectory of the bullet into the vehicle, through the vehicle and if/where it was deflected and at what angle cannot be determined from the information supplied to us.
19. There was, however, a newspaper on the dashboard shelf that appeared to have a raking perforation through it consistent with the passage of a bullet. However, the position of where the newspaper was when struck is unknown, or whether it had been moved after having been struck.
20. A possible exit hole as shown in Figure 4, of MSM's report page 15, this is consistent with the exit of a damaged, or fragmented bullet.
21. We have seen no evidence that any bullet fragments were recovered. We are also unaware of any spent cartridge cases having been recovered.

22. We would expect that a search of a secured shooting scene, where multiple shots had been discharged from self-loading weapons such as the L1A1 SLR, by competent personnel would yield these evidence types.

23. Due to the unknown precise orientation of the Mini, whether it was parked parallel or askew to the footpath, and its unknown precise position along Ardmonagh Gardens, it is not possible to pinpoint the origin of the alleged shot; there are numerous positions, from where the shot could have been discharged from.

24. These possible positions would be within an arc from anywhere from the front of the fence, adjacent to Ardmonagh Gardens, from within the school grounds, to along Shepherd's Path.

25. M2 describes how he was ordered by Cpl Mackay to position himself against the metal school fence. He describes M1 and Cpl Mackay being positioned at the corner of the fence looking towards Shepherd's Path. M2 has marked 'Plan B' (map M2-1) with 'xx' to indicate their positions. (A copy of map M2-1 has been appended to these Findings marked Appendix B).

26. He describes Cpl Mackay discharging several shots in the direction of Shepherd's Path. Following these shots, M2 describes seeing M1 fire a single shot from a kneeling position which struck the Mini.

[259] Dr R. B. Irwin's evidence was admitted under Rule 17. He stated that he was called to Springfield Road RUC Barracks at 12.25 am on 14th September 1975 where he saw the deceased lying dead on a stretcher. Examination of the body showed the presence of three bullet wounds. He believed death would have occurred approximately 2 hours earlier namely around 11pm and that the gunshot wounds were fired at some distance from the body.

[260] A post mortem was performed by Dr Press on 14th September 1975. He provided a cause of death as:

1(a). Bullet Wounds of Trunk.

[261] Dr Press had noted that a bullet had entered the back of the left shoulder and had traversed the chest before making its exit on the right side of the front of the chest. In its course it fractured the first left rib, lacerated the upper part of the left lung and heart before fracturing the fourth right rib. Another bullet had entered the right side of the front of the abdomen and had traversed the abdominal cavity lacerating the small intestine before grazing the sacrum and making its exit on the left side of the back.

[262] Dr Press concluded that the injuries caused by these bullets would have caused his rapid death.

[263] Dr Press also found that a bullet had traversed the right forearm but that this was unlikely to have accelerated death.

[264] He opined that the injuries were of a type caused by bullets of high velocity and that there was nothing to indicate that any of them had been fired at close range. Furthermore, Dr Press stated that the paths of the bullets through the body would suggest that one possibly two of the bullets had struck the deceased as he collapsed.

[265] Turning to the issue of marks on the deceased's hands/body. Dr Press found that abrasions to the face, the right forearm, the fingers of the left hand and on the outer side of the right thigh were probably caused when he collapsed.

[266] Mr Wallace from FSNI had provided evidence to the original Inquest. He noted the following:

- (i) Swabs taken from the deceased's hands and cheeks revealed very high levels of lead and antimony, metallic elements present in firearms residues;
- (ii) The deceased's jacket revealed bullet entrance holes in the right cuff, in the centre stomach area and in the near left shoulder. Bullet exit holes located in the right cuff and in the lower edge of the bottom right pocket;
- (iii) Several small holes in the front of the right shoulder area were consistent with bullet fragmentation. Very high levels of lead, antimony and barium were detected on all exterior surfaces of the jacket.

[267] Mr Wallace had attended the scene and an examination/swabs of metal upright of a fence revealed the presence of lead and antimony consistent with the fence having been struck by a bullet.

[268] Mr Wallace had also examined the Mini vehicle. He observed the bullet entrance hole beside the bottom left-hand corner of the rear number plate. The bullet exited beside the front right-hand side indicator lamp.

[269] Mr Wallace opined that if this Mini was parked outside number 70 Ardmonagh Gardens then the shot causing the damage to the car would have been discharged from a point on the waste ground close to the fence.

[270] Mr Wallace concluded that it was not possible to express an opinion as to whether or not the deceased was firing a gun. It would not be possible to distinguish lead and antimony from a bullet case and that originating from the discharge of a firearm. He was further of the opinion that the deceased must have been close to the fence to receive fragmentation damage to the clothing.

[271] Professor Jack Crane, Consultant Forensic Pathologist, and former State Pathologist for NI was retained by CSNI to review the evidence and provide a

report. He provided two reports, 18th December 2020, and a supplementary report 12th April 2022.

[272] Professor Nathaniel Cary, Home Office Registered Consultant Forensic Pathologist, was retained on behalf of the NOK. He also provided a report dated 18th June 2021. In addition, both these experts gave evidence to the Inquest.

[273] At my direction both of these experts met in order to outline areas of agreement and disagreement. For completeness I have set out below their joint minute dated 10th April 2022.

[274] Dealing first with Professor Crane's evidence. He agreed that death was due to a bullet wound of the chest with the fatal round having struck the deceased on the back of the left shoulder close to the left upper arm. There had been massive bleeding into both chest cavities.

[275] According to Professor Crane:

“the scenario outlined by Soldiers A & B (above) is inconsistent with the autopsy findings. Leo Norney sustained a gunshot wound to the front of his abdomen indicating that he must have been facing the shooter when the weapon was fired. Also, whilst the position of the entrance wound on the back of the left shoulder could be consistent with Leo Norney running away in the Whiterock Road direction and with the back of his body being presented to the soldiers in Ardmonagh Gardens and being hit by a bullet, this does not adequately explain the downwards trajectory of the bullet through the chest. The declination of the path of the bullet traversing the chest is likely to have been in the order of about 45degrees. Even bent forwards in a running “head down” attitude would not account for the direction of travel of the bullet through the chest.”

And:

“It is of interest that the strike mark on the railings is approximately 3 feet from ground level, at about the same height as the exit wound on Leo Norney's back. It is possible that the bullet which passed through his abdomen had then struck the railings although this would seem to be a little distance away from where his body was located as marked by the X on the map C6.” (Appendix C)

[276] Dr Cary also agreed the cause of death as bullet wounds to the trunk. In his report Dr Cary was asked to address 4 questions.

- (i) The type of weapon and ammunition used to inflict these injuries:

[277] Dr Cary opined that: “ In my opinion the range of possibilities would include 5.56mm, 7.62mm and the more old-fashioned .303 calibre. However, if the court accepts that the shot that entered the Mini motor vehicle was part of the same group of shots then 5.56 has been largely excluded by the firearms experts.” He continues: “Furthermore, if the Inquest concludes that relevant shots were discharged from army issued SLR(s) that fire 7.62mm ammunition then there is nothing against this from a pathological point of view.”

- (ii) The relative positions of the deceased and the shooter (assess when the deceased was shot, including the distance that might have existed between the deceased and shooters.)

“All that can be said in terms of range is that there is no evidence of any close-range effects, whether from contact or close discharge of less than one metre. The range may simply be expressed as beyond a distance of about a metre.”

“On purely pathological grounds I am unable to say whether the shots to the back or front occurred first... Professor Crane’s proposal however appears reasonable and plausible.”

- (iii) The anatomical position of the deceased when he was shot:

“ I see no reason to necessarily suggest that the deceased was anything other than approximately upright in relation to either of the two shots to the trunk...”

- (iv) The likely sequence of the shots that hit the deceased.

“ When shots are fired in rapid succession it is seldom possible to give a sequence...However, I can see exactly where Professor Crane is coming from in relation to the abdominal shot happening first, with the deceased then collapsing forwards to sustain the shot to his back..”

[278] In their oral evidence both experts agreed that the gunshots would not have caused the deceased to “spin” round as described by M3 in his evidence to the original Inquest.

[279] Prof Crane and Dr Cary agreed the following:

1. He had been struck by 3 bullets. One bullet had struck him on the back of the left shoulder and had passed through the chest to exit from a wound on the right side of the front of the chest. A second bullet (although not necessarily the second in sequence) had struck the front of the abdomen and had passed through the abdominal cavity to exit from a wound on the left side of the lower back. The third bullet had hit him on the back of the right upper forearm and had exited from a wound near the right elbow.
2. All 3 bullets which struck him had passed through the body.

3. The bullet wound through the chest would have caused his rapid but not immediate death.
4. There was nothing to indicate that any of the bullet wounds had been sustained at close range.
5. The wounds were consistent with those associated with high velocity bullets.
6. The facial injuries which he sustained were trivial and could have occurred if he had collapsed and struck his face on the ground.

Discussion

[280] The evidence in this matter has presented three possible scenarios, namely:

- (i) The four-man patrol led by L/Corporal Mackay were fired upon by two gunmen, they returned fire, shooting Leo Norney with the other gunman making off with the weapon;
- (ii) There was an accidental discharge by L/Corp. Mackay or another member of the patrol which hit the deceased and the patrol fired a round into the Mini car in order to paint a picture of being fired upon and returning fire;
- (iii) L/Cpl Mackay had a clearly expressed intention to “waste someone” on the night of 13th September 1975. The other members of the patrol did not share this intention. L/Cpl Mackay shot and killed Leo Norney as he walked home along Shepherd’s Path. The other patrol members conspired with L/Cpl Mackay to cover up Mackay’s actions.

[281] Having considered all the evidence, including statements and records which have not been referred to in these findings, I find that the first two scenarios are most improbable. My findings accord with the third scenario, as follows:

[282] The deceased, Leo Norney, was entirely innocent.

[283] On the evening of 13th September 1975, the deceased, Leo Norney, accompanied by Marcus Quigley, had travelled in a taxi along the Whiterock Road with the intention of going to 58 Ardmonagh Gardens where his girlfriend was babysitting. Within the taxi was Karen McFarlane and Margaret McHugh. They did not know the deceased. During the short journey the taxi was stopped by an army patrol stationed on the Whiterock Road in the vicinity of McCrory Park. The occupants were ordered out of the taxi except for an unknown gentleman who was holding a small child. The deceased and others were searched, nothing was found and they were allowed on their way. There was some interaction between some of the taxi occupants and the soldiers which has been described as “banter”, namely a soldier who was wearing glasses being called “specky”.

[284] The deceased got out of the taxi close to “Shepherd’s Path” which was a path which ran along the fence line of St Aidan’s Christian Brother’s Primary School and linked the Whiterock Road with Ardmonagh Gardens.

[285] The deceased was on his own.

[286] “Shepherd’s Path” was in essence a shortcut between these two areas and traversed some fields. Within these fields and close to the path was what Mr Brian Murphy, Consultant Engineer, described as a “rocky outcrop”. This is “the mound” as delineated on the plan at Annex 1 to these findings.

[287] The path itself had no streetlights but there was some lighting in Ardmonagh Gardens and similarly on the Whiterock Road. As the deceased walked along this path, he was by himself and holding nothing. I believe that Ms Dolores O’Neill was incorrect when she described him as placing a newspaper under his arm whenever he got out of the taxi.

[288] I have had the benefit of both seeing and hearing first hand M2’s evidence, albeit remotely. I take into account the fact that M2 has suffered from mental health issues and alcohol issues. He blames the time he spent in the army for the majority of his issues and he has been diagnosed with PTSD. However, I ask rhetorically, what does M2 stand to gain from changing his evidence some 47 years later? Why not simply continue to maintain the narrative previously given by him and the other members of the patrol?

[289] M2’s explanation for changing his evidence is to clear his conscience and not to continue living as he has done for the last 47 years. He has accepted that he has given previous dishonest accounts but now feels that the Norney family deserve to know the “truth”.

[290] I was impressed by M2’s evidence and the manner in which he gave same. He did not waiver when appropriately challenged and made concessions.

[291] I am satisfied that his evidence at this Inquest represents an accurate depiction of the events leading up to, during and after the shooting dead of the deceased, Leo Norney.

[292] I find that earlier in the afternoon of 13th September 1975, L/Corporal Mackay had instructed his 4-man patrol comprising of himself, M1, M2 and M3 that they were going to “waste” someone that evening. I find that “someone” to have been Leo Norney, although there is no evidence that he was deliberately targeted or sought out by the patrol. In other words, he was simply in the wrong place at the wrong time.

[293] L/Corporal MacKay, M1, M2 and M3 left Fort Monagh and made their way to Ardmonagh Gardens. There they took up positions to enable them to observe

individuals coming along Shepherd's Path. On seeing the deceased, I find that L/Corporal MacKay fired at him striking him initially in the abdomen causing him to collapse to the ground. The deceased was shot twice more. M1 then fired at the rear of the Mini car which was parked outside No. 70 Ardmonagh Gardens. One shot was fired and the bullet entered the rear nearside of the Mini and exited beside the front right indicator lamp. I find that there was only one bullet hole created and the other hole identified to the rear of the Mini was not caused by a bullet. The position of M1 is broadly consistent with the direction of fire required to create the bullet damage to the Mini.

[294] At this time, I find that four civilians, namely Francis Pyper, Eugene Robert Douglas, Thomas McKernan and Kieran Forde had left a disco at St Thomas' School on the Whiterock Road. They crossed that road at the fields and started to cross the fields heading in the direction of Ardmonagh Gardens. Whilst doing this they were ordered to stop by a number of soldiers and made to lie on the ground, face down. Witness Kieran Forde was able to give the first name of M2 which I find was due to him being in the field/area of waste ground and M2 standing close to him.

[295] Although Francis Pyper gave evidence that the group were verbally abused by the soldiers, I find on balance that this was not the case.

[296] Whilst they were lying in the field, some of the group noticed a body lying close to/partly on Shepherd's Path. Some of these witnesses stated that two soldiers kicked at the deceased's body in order to turn it over whilst some accepted that the soldiers may have been turning the body with their feet. However, I note that M2 described seeing MacKay kick an object on the ground.

[297] All four of these individuals gave evidence to the Inquest that the deceased's body was pulled along the ground by soldiers before being placed on a stretcher and I find again on balance that this was in fact the case. The abrasions found on the deceased's body I find were more likely caused when he collapsed to the ground after being shot.

[298] I do not find that the deceased's body was bitten by dogs, had cigarettes stubbed out on it or that it was struck by rifle butts. M2's evidence is that something was kicked by Mackay. He was asked by Mr Skelt KC:

Q. In relation to the kicking, as we understand your statement you were able to see who you take to be Mackay kick an object, but you could not see what it was that he kicked?

A. No, I couldn't see it, no.

Asked by Mr McCollum KC:

Q. And you said that you saw Mackay kicking something on the ground?

A. Yes.

Q. In retrospect can we take it that that was Leo Norney?

A. Possibly, yes, yes.

[299] The joint pathology evidence is that nothing of a specific nature in any of the non-bullet injuries indicates that the deceased had been kicked. Witness evidence is uncertain that the deceased was kicked with the intention of causing injury or that he was roughly turned over by soldiers with the use of the foot. I am unable therefore to find that one event is more likely than the other.

[300] Once placed on the stretcher the deceased was taken by army ambulance to Springfield Road RUC station and placed within an Inspector's office awaiting inspection and certification of death by a Doctor. No reasonable explanation has been provided to the Inquest as to why this happened and I find that the deceased should have been brought immediately to a hospital. I note that following this incident RUC Headquarters issued a Force Order to ensure this was not to happen again.

[301] Following the shooting I find that L/Corporal Mackay and his patrol proceeded to "cover up" the truth of what had occurred and that the members of that patrol, namely Mackay, M1, M2 and M3 provided false accounts to the RUC and that those who gave evidence at the original Inquest gave an untrue account of the events that led to the death of Leo Norney. In addition, I find it is more likely than not that the soldiers removed their spent cartridges from the scene. They concocted a story about two gunmen situated at "the mound" and of being fired on, of returning fire, felling one individual and giving chase to the other who got away with the weapon they falsely alleged Leo Norney had been using.

[302] For the avoidance of any doubt, I find that Leo Norney was alone, he was unarmed and that at no time was this army patrol fired upon by Leo Norney or anyone else.

[303] I also heard no convincing evidence that this death was the result of an accidental discharge and therefore entirely unintentional.

[304] I find that the death of Leo Norney was a deliberate act on the part of L/Cpl Mackay. He had told the patrol that they were going to "waste" someone. It is unclear what the rest of his patrol, namely M1, M2 and M3 thought this meant and if Mackay was going to follow through with his threat. I am satisfied that M1, M2 and M3 had not planned to shoot dead any individual. I am also satisfied that Leo Norney was not specifically targeted by the patrol. I find that once Mackay engaged

in following through on his stated intention to “waste someone” the other patrol members did actively engage in the cover up. I find the reason M2 has recently given for his involvement in the cover up to be credible in so far as he identified the malign and threatening influence Mackay had over his fellow soldiers. This characterisation also surfaced in the police enquiry into the planting of ammunition on members of the public by L/Cpl Mackay, M1, M3 and others.

[305] I find that L/Corporal Mackay was at best a “strong personality” and at worst a “bully” who was “aggressive and unpredictable” and who was able to intimidate his patrol as well as influence those in command above him. I find that M2 was in fear of him which is understandable given that he witnessed L/Corp. Mackay shoot dead an innocent civilian.

[306] I further find that the Chain of Command were well aware of L/Corporal Mackay’s characteristics as evidenced by the detailed entry placed within his personnel file and referred to above. I find that L/Corporal Mackay had been late joining his battalion in Belfast due to the fact that he was in prison in Scotland having been convicted by a civilian court of “wounding”; a serious offence of violence. Notwithstanding this conviction the Chain of Command allowed L/Corporal to remain in the army and indeed gave him a command role of his patrol.

[307] Army policy in 1975 incorporated a discretion to dismiss for an offence of wounding as opposed to a mandatory dismissal. I am conscious that I have not heard detailed evidence on the reasons for this particular policy and that I am considering a case of some antiquity. Nevertheless, it is surprising that the policy did not mandate dismissal on conviction for an offence involving the use of gratuitous and serious violence and which results in a sentence of imprisonment. The obvious risk, as demonstrated in this case, is of soldiers remaining in the army who, particularly in a civilian setting, pose a risk to the public they are entrusted to protect. The misjudgement was compounded by a failure to consider the risk of putting a soldier with a conviction background, and released from prison two months earlier, in charge of patrolling a civilian area.

[308] Whilst the death of Leo Norney or any other innocent civilian was not directly foreseeable, the risk posed to the public by L/Cpl Mackay was identifiable. There was insufficient supervision of L/Cpl Mackay such that his conduct on this occasion was prevented. These failings lead me to conclude that the patrol was not planned or organised in such a way as to minimise to the greatest extent possible the risk that the patrol or members of the patrol, in particular L/Cpl Mackay might resort to the use of lethal force.

[309] Whilst it is clear that, had L/Cpl Mackay been dismissed from the army following his conviction for wounding, Leo Norney would not have been killed on

the night of 13th September 1975, I find that had adequate risk management and supervision been applied to L/Cpl Mackay's continued service in the army following this conviction, the death could have been prevented.

[310] The absence of adequate supervision and risk management in respect of L/Cpl Mackay is further evidenced in his criminal actions along with others (including M1 and M3) from 1 Black Watch in the months prior to and following the shooting of Leo Norney. Members of 1 Black Watch were arrested for planting ammunition on civilians both on dates prior to and post the shooting of the deceased. At the time of their arrest, L/Cpl Mackay, M1, M2 and M3 had the opportunity to tell the RUC the true circumstances of how Leo Norney came by his death but they did not do so. This of course frustrated the police investigation and indeed the subsequent HET investigation.

[311] Although the role of this Inquest is not to conduct an audit of the police investigation which occurred at the time, following the death, I believe that it is right that I touch upon same. The investigation was conducted by former D/Superintendent Simpson who was a Detective Sergeant at that time. I found Mr Simpson to be a witness who was doing his very best to assist the Inquest and I have no doubt that he was a very diligent and hard-working police officer. I also acknowledge that at the time he was working in what he described as a "war zone" and that he did not enjoy the luxury of the time the Inquest process has been able to devote to this investigation. He was at pains to point out on several occasions during his evidence, which I fully accept, that he acted according to what he was being told by the soldiers at the time. He firmly believed (and still does) that the bullet hole in the Mini was caused by the accidental discharge (from M2's rifle). It did appear however, that he was fundamentally misled by a group of soldiers.

[312] Again, in fairness to former D/Supt Simpson he resubmitted the file on the shooting to the DPP after the patrol were arrested and charged with the planting of ammunition.

[313] As regards the moving of the Mini, D/Supt Simpson explained that this was done because the alternative was to have it guarded all night in situ in a hostile environment. Whilst I can understand that explanation, I find that not enough steps were taken by police on the ground to ensure the exact location was identified where it was sited before its removal and thus an important evidential trail was effectively contaminated.

[314] I am satisfied to the requisite standard that, the Deceased, Leo Norney, was an innocent young man. He happened to find himself in the wrong place at the wrong time, walking home from a night out and was shot dead by Lance/Corporal MacKay who had planned to "waste" someone that very evening and he had expressed this thought to the other members of his patrol, namely M1, M2 and M3. Following the

shooting all members of the patrol embarked upon a “cover-up” of the event and invented a story of two gunmen and of being fired upon and returning fire. That cover-up included M1 discharging a round from his rifle into the rear of the Mini car.

Conclusion

[315] To conclude I find as follows:

- i. The deceased was Leo Anthony Norney of 1a Ardmonagh Gardens, Belfast.
- ii. He was born on 25th April 1958 at Raglan Street, Belfast.
- iii. He was employed as a General Post Office Worker;
- iv. He was single;
- v. His father was Francis Norney (van driver) and his mother was Annie Norney both deceased;
- vi. He died on 13th September 1975;
- vii. He was shot 3 times to his body;
- viii. At the time he was shot he was walking along Shepherd’s Path in the direction of Ardmonagh Gardens;
- ix. The deceased was unarmed and posed no threat to the army patrol;
- x. The army patrol had not been fired upon.
- xi. The fatal shots were fired by L/Corporal Basil Mackay now deceased;
- xii. The shooting was unjustified;
- xiii. The shooting was covered up by all members of the patrol;
- xiv. The cause of death was :
 - (a) Bullet wounds of Trunk.

[316] Before formally closing this inquest I wish to hear any submissions in respect of any applications that I change previous orders in relation to anonymity. I am conscious that anonymity should be reconsidered prior to the formal closure of the inquest.