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down (subject to editorial corrections)*

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IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Hemsworth's Application (Collette)

AN APPLICATION FOR JUDICIAL REVIEW BY  
COLETTE HEMSWORTH

WEATHERUP J

[1] This is an application for judicial review of three decisions made by the Coroner in relation to the Inquest to be undertaken in respect of the death of John Hemsworth, late husband of the applicant, on 1 January 1998. The three decisions are, first of all, the refusal of the Coroner to call as witnesses at the Inquest any police officers who have been identified as members of two landrover patrols that were present at or near the location where the deceased sustained injuries relevant to the death. The second decision concerns the refusal of the Coroner to recuse himself from the Inquest as a result of having allegedly predetermined the issue of the relevance of the evidence of the police officers. The third decision concerns the refusal of the Coroner to conduct the Inquest in accordance with the principles of the decision of the House of Lords in Jordan v The Lord Chancellor [2007] UKHL 14. Mr McDonald QC and Ms Quinlivan appeared for the applicant and Mr Hanna QC and Ms Elliott appeared for the respondent. The Chief Constable was a Notice Party, but was not represented on the hearing of the application for judicial review.

[2] The background, as appears in the affidavit sworn on behalf of the applicant, indicates that the deceased died on 1 January 1998 as the result of a stroke brought about by a blood clot. It now appears that certain events occurring in the early hours of 7 July 1997, when the deceased was assaulted, caused or contributed to his death six months later. In July 1997, the deceased attended the offices of his solicitor and instructed a member of the firm to issue proceedings against the Chief Constable for assault and battery. His instructions were that on 6 July 1997 he had been walking down Malcolmsom Street, Belfast when a number of persons were chased down the street by police officers; the police officers then turned on the deceased, who was struck on the face with a truncheon and fell to the ground; he was kicked on his left

side and on his back and struck by the police with batons. The police have denied any involvement in the events that led to the injuries sustained by the deceased.

[3] The State Pathologist carried out an autopsy on 3 January 1998 and stated that it was not possible to connect the death with the injury sustained in July 1997. Accordingly, the Coroner registered the death of the deceased on 30 April 1998 as due to natural causes. The family of the deceased were not content with that outcome and they commissioned a report from a Professor Pounder of the University of Dundee, who on 4 August 1999 reported that it was highly likely that the injuries sustained by the deceased were the sole direct underlying cause of the death of the deceased. The applicant's solicitors forwarded the report to the Coroner and invited him to hold an Inquest. However, because he had already registered the death, the Coroner did not have power to hold an Inquest unless ordered to do so by the Attorney General. On 20 January 2000 the applicant's solicitors wrote to the Attorney General asking that he exercise his power under section 14 of the Coroner's Act (Northern Ireland) 1959 to direct the Coroner to hold an Inquest. On 2 February 2000 the Attorney General ordered the Coroner to hold an Inquest into the death of the deceased.

[4] The Coroner commenced an investigation into the death of the deceased. In relation to the injuries, the Coroner obtained the opinion of another Pathologist, a Professor Whitwell, and she expressed the view that despite the time delay between the injuries and the death it was likely that the death was linked in terms of causation to the assault that had occurred in July 1997. In relation to the events of the evening on which the deceased sustained the injuries, the Coroner required the police to investigate the events of 7 July 1997. This led to a police report completed by Detective Chief Inspector Stewart on 11 April 2001.

[5] After the police report had been received by the Coroner there was a preliminary hearing of the Inquest in February 2003. At that time the Coroner took the position that there was no evidence that the deceased was struck by police officers. There was correspondence between the applicant's solicitors and the Coroner and by letter of 12 August 2003 the Coroner stated that there would not appear to be any independent evidence that the deceased was struck by the police. There was a further preliminary hearing on 2 September 2003 where, further to the application of the applicant, the Coroner refused to recuse himself. At a preliminary hearing on 20 December 2004 a list of proposed witnesses to be called to the Inquest was produced on behalf of the applicant. The list contained the names of the police officers identified in the police report as having been at the location identified by the deceased on the evening he was assaulted.

[6] Proceedings in the Inquest went into abeyance as appeals got under way in relation to the cases of Jordan and McCaughy & Grew. The decision of the House of Lords was delivered in March 2007. A further preliminary hearing took place on 4 March 2008 when the Coroner indicated his preliminary view that he did not intend to call the police witnesses. There were then exchanges of correspondence between

the applicant's solicitor and the Coroner. Finally, by a letter of 14 November 2008 the Coroner stated his decisions not to require the attendance of the police witnesses and not to recuse himself from conducting the Inquest.

[7] The police report summarised the evidence that emerged from the police investigation. First of all, the applicant, who lived in Conway Square, Belfast, reported to police what she claimed she had been told by her husband almost immediately after he had been injured. She was separated from the deceased but she reported that he had come to her house between 1.00 am and 1.15 am on 7 July 1997. She believed that his route from a GAA club had taken him along the Falls Road, Springfield Road and Malcolmson Street. When the deceased arrived at her house she was in bed and the deceased said to her "The peelers have beat me". He could not speak properly because his jaw appeared to be broken. He told her that the incident had occurred at the corner of Malcolmson Street and Waterford Street and that he then made his way to her house in Conway Square. He stayed for a short time and then left to go to the Casualty Department at the Royal Victoria Hospital. The applicant also reported that the deceased had told her that after the assault he had been stopped again by police at Dunville Park and that these police had said they were mates of those who had beaten him earlier and that he claimed that he had been verbally abused by the police at that location.

[8] The police also interviewed Michael Hemsworth, the father of the deceased, who went to the Royal Victoria Hospital in the early hours of the morning of 7 July. The records show that the deceased arrived at the hospital at 2.20 am. The father obviously arrived some time later and when he went to the hospital the deceased told him that he had been involved in an incident with the police and that this had occurred at the bollards in Malcolmson Street. The bollards, apparently, are at the Springfield Road end of Malcolmson Street, whereas the deceased had told his wife that the incident had occurred at the Waterford Street end of Malcolmson Street. In any event, the father reported that the deceased had said that he had been struck across the face with a truncheon, that he fell to the ground, that he had been kicked in the back and beaten with a baton and that the police had sworn at him. The father also reported that the deceased had told him that the police had taunted him at the gates of Dunville Park.

[9] Other police enquiries identified an Anthony Carnaghan and a Mark McKeavney who had been at the junction of Springfield Road and Malcolmson Street on the night in question. It is evident that there was rioting in the area on the evening in question. Mr Carnaghan reported that the police had entered the area and he had run into Malcolmson Street. He claimed that he got to the bottom of Malcolmson Street, that police landrovers blocked the street and that he ran into the gardens of the last house before Waterford Street. He told police that he saw police hit a man and that this man fell against a garden gate and that the police officers continued to beat this man. Mr Carnaghan stated that when the police left the scene he and Mark McKeavney went to the assistance of the injured man. This man's jaw was described as hanging loose, he was having difficulty talking and he

was covered in blood from his face and down the front of his clothes. Mr Carnaghan is now deceased.

[10] The other witness was Mark McKeavney, who was with Mr Carnaghan. When the police arrived at the scene both Mr Carnaghan and Mr McKeaveney ran away, but in different directions. Mr McKeaveney timed the incident at about midnight to 12.20 am. He stated that he ran into a cul-de-sac on the left-hand side of Malcolmson Street and remained there while the police were in the street. When the police left he came back into Malcolmson Street and he saw Mr Carnaghan with a man who was crouching against a wall on the left-hand side of Malcolmson Street at Waterford Street. This man had blood coming from his face and he had difficulty talking and his jaw looked loose.

[11] A further witness identified by the police inquiries was a Hugh Ferguson who lived at 2 Malcolmson Street. He recalled an incident of rioting on that date which he timed at about 1.45 am. He stated that the police came to the mouth of the junction and that plastic bullets were fired. He noted that a policeman ran into his garden and put some men out of the garden, but he did not see any of the policemen strike anybody.

[12] The investigating officers timed the walk from Malcolmson Street to Conway Square at some seven to eight minutes and the walk from Conway Square to the Royal Victoria Hospital at some nine to ten minutes.

[13] The investigation also established that Blue Section, Operational Support Unit, known as the Blues, were directed to attend the scene of the riot at 0134 hours on 7 July 1997. There were seven police land rovers with the call signs Blue 1 to Blue 7 that arrived in the area at 0143 hours. From the interviews of the seven Blue sections it transpired that Blues 3, 4, 5 and 6 had responded to Malcolmson Street to deal with rioters. Blues 3 and 4 had deployed at the Waterford Street end and Blues 5 and 6 had deployed at the Springfield Road end. Interviews were conducted with those who manned Blue 3 and Blue 4. Blue 3 comprised of five officers and Blue 4 comprised of five officers. Constable Cave was the driver of Blue 4 and he recalled driving the vehicle into Malcolmson Street from Waterford Street accompanied by Blue 3. He remained in the vehicle and other crew members debussed and moved to the front of the vehicle. The crowd dispersed and there was no direct contact between police and any member of the public. Constable Millar was the driver of Blue 3. She also recalled driving into the mouth of Malcolmson Street from Waterford Street accompanied by Blue 4 and her account was in agreement with that of Constable Cave. No other police deployment was established in the area. The provenance of the police officer who it was claimed ran into Hugh Ferguson's garden is not known.

[14] It was noted by the investigating officer that three police officers within the crews Blue 3 and Blue 4 had a different recollection in that they believed they had entered Malcolmson Street from the Springfield Road junction. Constable Cave told

Detective Chief Inspector Stewart that there had been some discussion within the Unit about these differences and that he had been telling the other officers that they had indeed entered at the Waterford Street end. As a result the Police Ombudsman's Office was involved and there were further interviews in relation to the circumstances in which the officers gave their accounts.

[15] Further investigations indicated that Blues, 3, 4, 5 and 6 moved to Dunville Park, which is close to Malcolmson Street. Blue 3 and Blue 4 were at the main gates on the Falls Road. The complaint made by the deceased to his wife and his father that he had been abused by police at Dunville Park, indicated that the same unit was involved as in Malcolmson Street. Blue 3 and Blue 4 were at both locations. At Dunville Park, with the exception of the drivers, the crew members entered the park in order to deal with rioters.

[16] The medical notes indicate that the deceased arrived at the hospital at 2.20 am. The Admission Notes reveal that he said he had been struck by a stick. He did not mention police or police batons. He was seen by a Senior House Officer and he reported that he had been hit by a stick on the left side of the face and had received a blow to his back. He was seen by a Dr McBride who noted that his face was very swollen around the angle of the jaw. He was seen by the Consultant in A&E who noted an undisplaced fracture on both sides of his jaw bone. He was seen by a Dental Surgeon who described him as un-cooperative and had been drinking heavily. The deceased again reported that he had been hit with a stick about two hours previously.

[17] The police report concluded that the involvement of the police in an incident with the deceased was 'debateable'. When the report was forwarded to the Chief Superintendent he said that the allegation of assault by police officers was 'questionable'. It appears, although the report is redacted at this part, that it was not recommended that there be any prosecution.

[18] Mr Hanna for the Coroner made a number of criticisms of the evidence relied on by the applicant as supporting the involvement of police in the injuries sustained by the deceased.

First of all, the evidence relating to the timing of the deceased's assault on 7 July. He had reported to his solicitor that it was at 1.00 am; his wife said it was not later than 1.15 am when he arrived at her house; Mark McKeavney said that the events occurred between midnight and 0020 hours; the hospital records indicate that he arrived at the hospital at 2.20 pm.

The second criticism relates to the evidence of the timing of the police being in the vicinity. The police records indicate that they were tasked to the scene at 0134 hours and did not arrive at the scene until 0143 hours. Accordingly, it is said that the police were not at the scene at the time that the other evidence indicates the incident occurred.

Thirdly, the evidence relating to the location at which the deceased was assaulted. He told his wife that it was the corner of Malcolmson Street and Waterford Street; he told his father it was at the other end of the street where the bollards are at the Springfield Road end; Mr Carnaghan places the incident at the Waterford Street end.

Fourthly, the evidence relating to the circumstances and the nature of the assault. He told his father he was struck across the face with a truncheon, had fallen to the ground where he was kicked and beaten with batons; Mr Carnaghan described a man falling through a garden gate and being hit.

Fifthly, the evidence relating to whether the victim of the assault was bleeding. Mr Carnaghan and Mr McKeavney both noted that the man they assisted was covered in blood from his face and down his clothes but the A&E record contains no sign of blood and no lacerations and the dentist found no lacerations in the mouth.

Sixthly, the evidence relating to the deceased's account as to how he was assaulted. Contrasted with his report to his wife, father and solicitor were the Admission Notes recording the deceased's report that he was struck with a stick and made no mention of the police, and similarly in the other records of the doctors and the dentist.

[19] There was engagement by the Police Ombudsman. By letter of 1 May 2007 from the Police Ombudsman it was indicated that there had been a review of two main areas of the case. One main area was the medical evidence as to cause of death and while there has been debate between various experts as to a causal connection between the injuries sustained and the subsequent death it is now common case that there is such causal connection. It is not necessary to address the Police Ombudsman's view of the medical evidence as to the cause of death. The other main area reviewed was the evidence that existed to support the allegation that police officers assaulted the deceased. Reference was made to two witnesses giving evidence that the deceased had been assaulted. Presumably that would be Mr Carnaghan and Mr McKeavney. The Police Ombudsman referred to discrepancies, particularly in the description of injuries that were not consistent with the medical evidence from the hospital staff; that the deceased did not mention assault by police officers or the use of a baton to the medical staff, but claimed he had been hit by a stick; that there was nothing in the evidence to link any officer with the injury; that the deceased was noted to be drinking heavily and un-cooperative; the doctors found no lacerations externally or inter-orally, which contradicts the evidence given by two witnesses who state that the deceased was assaulted by police and was bleeding heavily. It was stated that the statements were "... not consistent with the medical findings or with the statement made by the deceased on his arrival at hospital." The conclusion to the letter was that -

“There is no evidence that any RUC officer was responsible for John’s death. I can identify nothing further that we can do to take the matter forward.”

[20] The Coroner’s affidavit sets out his approach to the issues. He states at paragraph 12 that he was referred by Counsel for the applicant to the list of witnesses that had been provided by the applicant’s legal representatives, which list included the officers in Blue 3 and Blue 4 plus their supervising Inspector. The Coroner states that “I indicated that I did not believe that the police officers could give any relevant evidence.” In relation to the police report the Coroner states that he gave careful consideration to the entire contents of the report of the police; he noted the discrepancies; made his provisional choice of witnesses based on a consideration of the documentation provided by the police; considered that he was entitled to rely on that professional investigation and that he had no reason to doubt the rigour of the investigation and there was no evidence before him of any cover-up; took account of the statements from the next-of-kin and the public, suggesting that the deceased had been assaulted by the police. The Coroner stated his conclusion -

“I found no basis on which I considered it necessary to look behind the police report. My conclusion, based on all of this information, was that the police officers had no relevant evidence to give as there appeared to be no independent evidence that the deceased had been assaulted by police with a baton.”

[21] At paragraph 18 the Coroner refers to the attendance of the police officers at the Inquest. It had been suggested by the applicant that subjecting the officers to cross-examination about their conduct on the night in question was necessary if responsibility for the death was to be established. The Coroner responds that the only evidence supporting the allegation of police involvement -

“.... is the deceased’s report to his father and the applicant and in addition there is one surviving witness in the aftermath of the assault on the deceased. In the light of the absence of any independent evidence of an assault by the police I have reached the conclusion that the police officers should not be called as witnesses.”

[22] The relevant legislation is the Coroners Act (Northern Ireland) 1959 and the Coroners (Practice and Procedure) Rules (NI) 1963 Rules. Section 17 of the 1959 Act provides that witnesses may be summoned to the Inquest by the Coroner as he thinks ‘necessary’. Section 31 provides that a verdict may be returned which sets forth particulars as to who the deceased person was and how, when and where he came by his death. The reference to “how” the deceased came by his death has

given rise to much controversy. The parameters of an Inquest are repeated in Rule 15 to the effect that the proceedings and evidence shall be directed solely to ascertaining the issues of who, how, when and where. Rule 16 prohibits the expression of any opinion on any other matter or on questions of criminal or civil liability.

[23] In R (Jamieson) v Coroner for North Humberside and Scunthorpe [1995] QB 1 Lord Bingham set out conclusions in relation to the scope of Inquests, which do not apply in all details in Northern Ireland, but some of those conclusions may be summarised for present purposes as follows -

First, an inquest is a fact-finding inquiry conducted by a Coroner with or without a jury to establish reliable answers to four important but limited factual questions, the first relating to the identity of the deceased, the second to the place of death and the third to the time of death. In most cases these questions are not hard to answer. The fourth question, and that to which evidence an inquiry are most often and most closely directed, relates to how the deceased came by his death. The Rules require that the proceedings and evidence should be directed solely to ascertaining those matters and forbids any expression of opinion on any other matter.

Secondly, "how" the deceased came by his death is to be understood as meaning "by what means". It is noteworthy that the task is not to ascertain how the deceased died, which might raise general and far-reaching issues, but how the deceased came by his death, a more limited question directed to the means by which the deceased came by his death.

Thirdly, it is not the function of a Coroner or his jury to determine or appear to determine any question of criminal or civil liability, to apportion guilt or attribute blame.

Fourthly, the above prohibition in the Rules is fortified by considerations of fairness. The law accords a defendant accused of crime or a party alleged to have committed a civil wrong certain safeguards, rightly regarded as essential to the fairness of the proceedings, amongst them a clear statement in writing of the alleged wrongdoing or right to call any relevant and admissible evidence and a right to address factual submissions to the tribunal of fact.

Fifthly, in case of conflict, the statutory duty to ascertain how the deceased came by his death must prevail over the prohibition in relation to opinions as to criminal and civil liability. The Coroner and the jury may explore facts bearing on criminal and civil liability, but may not express any opinion on any questions of criminal or civil liability.

[24] In relation to "how" the deceased came by his death, the "by what means" approach was adopted by the Court of Appeal in Northern Ireland in the Ministry of Defence's Application [1994] NI 279.



[25] The Human Rights Act 1998 and the application of the right to life under Article 2 of the European Convention apply to deaths that occurred after 2 October 2000 when the Human Rights Act came into force. The present case is a pre-Human Rights Act case as the death occurred prior to that date. R(Middleton) v West Somerset Coroner [2004]UKHL recognised that there may be some cases where the requirements of the Article 2 right to life would not be met unless “how” the deceased came by his death were to involve investigation of not simply “by what means” but “by what means and in what circumstances” the deceased came by his death. That outcome gave rise to debate about the application of the same approach in Inquests into deaths occurring prior to 2 October 2000.

[26] The debate reached the House of Lords in Jordan v The Lord Chancellor [2007] UKHL 14, the same case from Northern Ireland concerned the shooting by police of the deceased that had gone to the ECtHR as Jordan v UK. The House of Lords considered whether, in the light of the jurisprudence on Inquests in recent years, Jamieson and the Ministry of Defence’s Application reflected the current law in relation to pre-Human Rights Act cases. It was decided that Jamieson continued to apply to Inquests into deaths occurring before 2 October 2000 and that both Jamieson and the Ministry of Defence’s Application continued to be authoritative, subject to the additional comments of Lord Bingham, which included the following

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“37. There was no issue between the parties concerning the purpose or scope of an inquest. Thus I take it to be common ground that the purpose of an inquest is to investigate fully and explore publicly the facts pertaining to a death occurring in suspicious, unnatural or violent circumstances, or where the deceased was in the custody of the state, with the help of a jury in some of the most serious classes of case. The coroner must decide how widely the inquiry should range to elicit the facts pertinent to the circumstances of the death and responsibility for it. This may be a very difficult decision, and the enquiry may (as pointed out above) range more widely than the verdict or findings.”

[27] Of particular note for present purposes is that an Inquest must involve in the first place, a full investigation of the relevant circumstances and secondly, a public investigation, all for the purpose of eliciting facts pertinent to the circumstances of the death and responsibility for the death.

[28] An Inquest is a fact-finding inquisition and the rules of evidence that apply in the civil and criminal courts do not apply to Inquests, save as provided in the Act and the Rules relating to Coroners. In the present case there are statements from witnesses that contain hearsay evidence from the deceased and there is a witness

statement from a deceased person. Rule 17 allows the Coroner to admit documentary evidence if the maker's attendance is unnecessary and the source is shown to be reliable. The maker of such a document will be called to give evidence if required. In the present case Rule 17 would not seem to be applicable as the statements concerned do not involve instances where the attendance of the makers of the statements would be said to be "unnecessary". The witnesses, other than Mr Carnaghan, are available and he, being deceased, it would not appear that Rule 17 is apt to deal with his statement.

[29] What is the evidence relating to the injury of the deceased that might be considered in the present case? The evidence is that of the widow, reporting what the deceased told her immediately after the event; the evidence of the father, reporting what the deceased told him shortly after the event; the evidence of the solicitor, reporting what the deceased told him some days after the event; the statement of Mr Carnaghan, now deceased; the statements of Mr McKeavney and Mr Jackson, who remain available as witnesses. Then, contrary to all of the above matters, there are the statements of the police officers in Blue 3 and Blue 4, all of whom deny contact with the deceased. In addition there is the evidence of the hospital records. The causal link between the injury in July 1997 and the death in 1998 is no longer an issue.

[30] It is clear that there are discrepancies and inconsistencies in the evidence and the alleged offenders deny that they were involved. The police investigation has examined the evidence and has found the allegations of assault by the police to be debateable or, as it is otherwise put, questionable. It is also the case that the Police Ombudsman has carried out an investigation and has stated that there is no further step to be taken by the Police Ombudsman, that conclusion being reached as a result of the inconsistencies to which I have referred. In relation to the police report on the alleged assault, it appears to have been the judgment of the police that there was no basis for a prosecution. Clearly there was no evidence for the prosecution of any police officer. In relation to the report of the Police Ombudsman, it is equally clear that there was no evidence for any disciplinary proceedings against any police officer. More broadly, neither the police nor the Police Ombudsman could establish any general police involvement in the incident.

[31] The Coroner has stated that there was no evidence in relation to police involvement, which he qualified later to indicate that there was no evidence to support the allegations of police involvement, which I treat as meaning the same thing, and he otherwise referred to there being no independent evidence. The Coroner's position in relation to the available information is that it is unreliable because of discrepancies and inconsistencies to which I have referred. The Coroner has in effect assessed the available information as being unworthy of further inquiry at the Inquest and not requiring any response from the police by way of oral evidence at the Inquest.

[32] In view of the contents of the Coroner's affidavit, I am satisfied, contrary to the contention of the applicant, that the Coroner has reached his own conclusion on the available information and not simply adopted the police view.

[33] The functions of an Inquest include, as was noted in the Broderick Report in 1971, the allaying of rumour and suspicion. This relates to the "how" question, that is by what means the deceased came by his death. The inquiry would not deal with speculation as to the means by which the deceased met his death, nor in a case such as the present, would the inquiry deal with rumour and suspicion about the broad circumstances that might exist in relation to the death.

[34] The decision of the Coroner amounted to a finding that the threshold had not been reached for the examination of an issue at the Inquest, namely the issue as to whether there were actions by the police amounting to a direct cause of the death. The applicant contends that the threshold for inquiry should be 'the interests of justice'. I do not find that approach helpful as a practical measure of the standard of evidence that should be available before an issue is included in the inquiry in a particular case. On behalf of the Coroner it is contended that the threshold should equate to there being a case to answer, although the Coroner does not wish to adopt an approach that might suggest that the Inquest be equated to civil or criminal proceedings.

[35] If one of the functions of an Inquest is to allay rumour and suspicion then it becomes necessary to identify the circumstances in which rumours and suspicions require to be addressed. The Coroner cannot be expected to carry out an inquisition into every stated rumour and every stated suspicion, however apparently unfounded and unreasonable. There must be a plausible complaint relating to the issues touching the means by which the deceased came by his death. There must be a reasonable basis in evidence before the Coroner can be expected to conduct such an inquisition. There must be grounds for reasonable suspicion or a reasonable basis for the rumours, not amounting to mere speculation, to warrant further inquiry at the Inquest.

[36] If there are grounds for reasonable suspicion in relation to actions that are relevant to the direct cause of the death, it is the obligation of the Coroner to conduct a full and public investigation as to the circumstances and responsibility for the death. In so doing the Coroner would, of course, comply with the provisions in relation to the absence of expressions of opinion on civil or criminal liability. It is not for the Coroner to conclude in advance of the hearing that the reasonable suspicion cannot hope to be confirmed in evidence as being the fact. The Coroner's investigation extends to the hearing of the evidence as to the means by which the deceased came by his death. Full investigation includes examination of all the evidence relevant to the means by which the deceased came by his death. Rule 7 requires the Coroner to permit examination of any witness by a 'properly interested person' provided the questions are relevant. That cannot occur in cases involving grounds for reasonable suspicion as to the direct cause of death if the Coroner

assesses the evidence as unworthy of requiring an account from those who may be able to offer a relevant account. Further, a public investigation relates to the examination of the evidence in circumstances where the general public have an interest in the allaying of rumour or suspicion as to the direct cause of death. That cannot occur if the Coroner does not permit the witnesses concerned to be called to the Inquest in cases where there are reasonable grounds for inquiry.

[37] Are there such reasonable grounds for suspicion in this case? In my opinion there are. These arise from, first of all, the immediate report of the deceased to his wife, within minutes of the incident, that he had been assaulted by the police. It is clear that he had been assaulted, as was evident to her and as is evident from the hospital reports. Police involvement was included in the immediate report by him to his wife. Secondly, he also reported to his father that evening the involvement of the police in the incident that had caused his injuries. Thirdly, he reported the same within days to his solicitor indicating that there should be proceedings against the police. Fourthly, there is the witness, Mr Carnaghan, although now deceased, who made a statement indicating that he came across someone who had been beaten by the police, who may have been the deceased. Fifthly, there is the evidence of Mr McKeavney who was also present when this man was seen to have sustained injuries. Sixthly, there is the evidence of the householder, Mr Ferguson, as to police activity in his garden, when the police officers claimed that there was no contact with the public. Seventhly, there is the evidence of the police as to their presence at the scene at the relevant time. Undoubtedly there was a police presence in Malcolmson Street, where the incident was said to have happened. There has been some debate about which end of the street the deceased placed the incident and about which end of the street the police landrovers entered the street. There has also been some debate about the timing of events. Is it possible that the times are such that an incident could have occurred, as the deceased reported to others, between the time that the police are recorded as arriving at the scene, which I would assume to be a reliable time, and the time at which the deceased arrived at the hospital, which I would also assume to be a reliable time? The police have timed the walk from Malcolmson Street to Conway Square and from there to the hospital. It is possible, as a pure timing issue, that the deceased could have been in Malcolmson Street after the police arrived and have gone to Conway Square and then to the hospital by 2.20am. Of course, if that is what happened, some of the witnesses are wrong about their times. Eighthly, there is evidence of the police presence by members of the same Unit at another location at the time when the deceased claimed that there was another confrontation. I consider it to be striking that the deceased reported to his wife and to his father on the evening of the event, that the police he alleges had assaulted him confronted him at another place some minutes later, and when the records are examined it is found that, indeed, the same police were at those two locations within the relevant time span.

[38] Of course there are many criticisms to be made of all the matters referred to above. There are discrepancies and inconsistencies. There are denials by those alleged to be involved. As to whether there are grounds for reasonable suspicion so

as to warrant further inquiry, the answer must be, undoubtedly so. I conclude that the Coroner has applied the wrong test to determine whether there should be inquiry at the Inquest into police involvement and thus whether the police officers should be called as witnesses. The Coroner has concluded that there is no evidence to support the allegation or no independent evidence and thus the police evidence is not relevant. The test is whether there are grounds for reasonable suspicion as to the direct cause of the death such as to warrant a full and public investigation at the Inquest and undoubtedly that is so.

[39] The Coroner contends for a *Wednesbury* test as to the exercise of the Coroner's discretion on the calling of witnesses, relying on the judgment of Kerr J in Bradley's Application (29 August 1996). However the present case concerns the proper threshold for enquiring into an issue at an Inquest, a matter that the Coroner must determine before considering how the discretion will be exercised as to the summoning of the necessary witnesses to deal with the issues that have been determined to be relevant.

[40] The next issue that requires consideration is that of recusal. The applicant challenges the Coroner's decision not to recuse himself. The challenge is based on the ground of apparent bias. In Porter v Magill [2001] UKHL 67 the House of Lords confirmed the objective nature of the approach to apparent bias and posed the question: whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the decision maker was biased. There is no suggestion of actual bias on the part of the Coroner. The applicant alleges a number of grounds for apparent bias. The first concerns the alleged delegation to the police of the inquiry to be undertaken by the Coroner. By this is meant that the Coroner has not made the decision for himself on the evidence, but has simply accepted the police report. As indicated earlier I do not accept this contention. I am satisfied that the Coroner did form his own view on the matter. Secondly, it is alleged that there was a mis-understanding by the Coroner of his investigative role. I do not accept that he mis-understood his role in relation to this issue. Rather, the Coroner made a judgment in relation to the issues in the case which, as I have indicated above, was based on an incorrect test. Thirdly, the applicant alleges pre-determination of an issue in the Inquest. Has the Coroner, by his stated conclusions in relation to the police evidence, indicated a predetermination of the issue which I have now found is one that warrants investigation?

[41] The predetermination issue concerns the Coroner's decision that the police evidence is not relevant. A key issue for the family is police involvement and the Coroner has concluded that the evidence is such that the police witnesses are not required. If a decision-maker has committed himself to an outcome on a particular issue that remains to be adjudicated upon there may be predetermination. I accept that the Coroner has committed himself to a position in relation to this issue in such circumstances that it would be appropriate for another Coroner to conduct the Inquest.

[42] The final issue concerns the character of the Inquest to be conducted. At paragraph 22 of his affidavit the Coroner refers to the approach that he will take to the Inquest and he states -

“I intend to conduct the inquest in accordance with the principles laid down in Jamieson, that is to enquire into by what means the deceased met his death. I do not consider that the inquest hearing should be conducted in accordance with the principles in Jordan.”

Mr Hanna for the Coroner informed the Court that the Coroner was intending to distinguish the approach between an inquiry as to ‘by what means’ a deceased came by his death as opposed to ‘in what broad circumstances’. It has been made clear by Mr Hanna that the Coroner accepts that the Jamieson/Jordan approach should be taken. Thus there is no issue in relation to the appropriate character of the Inquest. In any event the Inquest will be conducted by another Coroner.

[43] The decisions of the Coroner in relation to the police witnesses and in relation to recusal will be quashed. I refer the matter back to the Coronial Service to proceed with the Inquest before another Coroner.