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IN THE CORONERS COURT FOR NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATH OF CÁRÁGH WALSH

Before: Coroner Joseph McCrisken

Introduction

[1] Cárágh Walsh was born on 29 October 2013 to Christopher O'Neill and Tammie Louise Walsh. Cárágh died on 7 February 2014, aged 14 weeks, in the Royal Victoria Hospital ('RVH'), Belfast.

[2] After a police investigation, Cárágh's father, Christopher O'Neill was charged with her murder. He was tried before McBride J, sitting with a jury and was found not guilty by majority of the murder of Cárágh, and not guilty by majority of an alternative count of unlawful act manslaughter.

[3] An inquest into Cárágh's' death has not been opened. In Northern Ireland it is normal practice for the decision in relation to the holding of an inquest to be made following the conclusion of criminal proceedings.

[4] Since the criminal trial has now concluded, in accordance with Rule 13(2) of the Coroners Rules (Northern Ireland) 1963 ("the 1963 Rules"), I must now consider if I should hold an inquest inquiring into Cárágh's death. To assist me with this decision I instructed, as Coroners Counsel, Mr Chambers BL and Ms Gallagher BL who have examined the evidence heard at trial and have brought some relevant authorities to my attention. I also received written submissions from both Cárágh's mother and father. I consider them to be properly interested persons in accordance with Rule 7 of the 1963 Rules.

[5] Section 11 of the Coroners Act (Northern Ireland) 1959 ("the 1959 Act") and Rule 13 of the 1963 Rules confer a discretion upon a coroner to decide whether or not to hold an inquest into the death of any person.

[6] Rule 13(2) provides as follows:

> *"After the conclusion of the criminal proceedings the Coroner may, subject as hereinafter provided, resume the adjourned inquest if he is of opinion that there is sufficient cause to do so."*
>
> Although Rule 13 appears to envisage a situation whereby an inquest is opened and adjourned, I intend to proceed on the basis that it applies equally to the present circumstances, were an inquest has not yet been opened but the decision has been adjourned pending the conclusion of the criminal trial.

Background

[7] On 5 February 2014 at 12.18pm Northern Ireland Ambulance Service received an emergency call in respect of a three month old baby girl called Cárágh Walsh. The caller was her father, Christopher O'Neill, then aged 23 years old. He said he was alone with the child in their home at Glasvey Park and she had breathing difficulties. The operator, Mark Gribben, kept Christopher O'Neill on the line until Mr Sands, a Rapid Response Vehicle paramedic, arrived.

[8] When Mr Sands arrived he came into the flat he described Cárágh as having a *"porcelain doll"* look, meaning that she was showing no signs of life and was not breathing. Mr Sands commenced resuscitation which continued until the ambulance arrived a short time later. Caragh was taken to the ambulance, resuscitation continued and she was conveyed to the Emergency Department of the RVH for Sick Children. Christopher O'Neill travelled with Cárágh in the ambulance during which time he told Colin Heaney, a paramedic, that he shook his daughter. Mr Heaney did not think there was anything untoward about this at the time.

[9] At the hospital Dr. Maney, Consultant Paediatrician, said Cárágh had no heart beat and was effectively dead. A team of doctors continued with resuscitation and various medical steps were taken to restore Cárágh's breathing and her circulation. She was then moved to the Intensive Care Unit. Christopher O'Neill (along with other family members) was spoken to by medical staff and he admitted to staff that he had shaken his daughter, but said that this was an attempt to revive her as he thought she was unconscious.

[10] After an initial examination Dr Maney reported to police that Caragh had *"suffered severe head trauma, resulting in severe brain injury"*. There were more medical examinations conducted including computed tomography (CT) scans and examinations of Caragh's eyes. Dr Paul Burns, Neuro-Radiologist, found that Cárágh had suffered a significant traumatic brain injury with both subdural and subarachnoid hemorrhaging. Sadly, Cárágh died on 7 February 2014.

[11] Christopher O'Neill was charged with murder and a trial on indictment took place at Craigavon Crown Court sitting in Armagh before McBride J between 17 January 2017 – 10 February 2017.

[12] The prosecution case against Christopher O'Neill was based upon medical findings and injuries that were noted to have been sustained by Cárágh. In the absence of any accidental explanation or in the absence of any natural disease to explain how these injuries occurred, the explanation put forward by the prosecution was that; (a) Caragh was swung by a limb with or without her head impacting on a hard surface, (b) her head was hit with a hard implement, (c) she was swung by a limb without any such impact of her head or (d) that she was forcibly shaken, again with her head being hit against a hard surface or hit with something hard.

[13] Christopher O'Neill denied that he did any of those deliberate acts. He accepted that he shook Cárágh 2-3 times *"with reasonable force"* in a panic to get some response from her but that was only after she had breathing difficulties.

The Criminal Trial

[14] I have considered a transcript of the entirety of the criminal proceedings. During the prosecution case, six medical experts gave evidence in relation to their findings when they examined Cárágh's body or tissues. They expressed their expert opinion as to the reason or the cause of those findings and were cross-examined in respect of their evidence by Senior Counsel for Christopher O'Neill.

[15] The prosecution called Dr James Lyness, State Pathologist for Northern Ireland, Dr Egan, Pathologist; Dr Du Plessis, Consultant Neuropathologist, Professor Mangham, Consultant Pathologist with experience in histopathology; Dr McCarthy, Consultant Ophthalmic Pathologist and Professor Freemont, Professor of Osteoarticular Pathology.

[16] Each of these doctors gave the Court the benefit of their expertise in relation to two matters; (1) the time when the injuries occurred and (2) their expert opinion as to what caused those medical findings/injuries.

[17] Dr Du Plessis considered that Cárágh had suffered severe brain damage known as hypoxic-ischemic injury and severe brain swelling, bilateral subdural bleeding over the brain and having regard to Dr McCarthy's report, severe retinal bleeding in both eyes. He said that those three findings constituted what is known in the terminology used in cases involving shaken babies as *"the triad"*. Dr Du Plessis said that Caragh's death was a *"full blown"* triad or a classic triad case and that since the brain swelling was not present on the initial CT scan taken at the hospital just over an hour after the emergency call and it could not therefore have caused the original collapse.

[18] Prof Mangham was specifically asked to report in relation to Cárágh's bones. He said that there were six fractures. One of those was a rib fracture and it was agreed that the jury should disregard that fracture from their consideration as it was likely to have occurred as a result of resuscitation. The relevant fractures which he found were;

a. two fractures to the right proximal tibia, one was closer to the knee and one was further towards the ankle,
b. a fracture to the left proximal tibia,
c. a fracture to the left distal femur, and,
d. a fracture to the right distal humerus.

[19] Dr Lyness and Dr Egan both reported on the bruises found on Cárágh. They both found that there were a large number of bruises or suspected bruises on Cárágh's body after both external and internal examination. Between 18 and 25 areas of bruising or suspected bruising were identified. Ultimately, the experts accepted that the only relevant findings for the purposes of the trial related to two bruises to Cárágh's head, and those were two bruises above the right ear and to bruising over the iliac crest. The experts considered that the remainder of the bruising could potentially be the result of medical treatment.

[20] The doctors considered the question of when the injuries occurred. In relation to the brain injury, Dr Du Plessis said it most likely occurred very close to Cárágh's cardiorespiratory arrest, that is, about noon or so on 5th February 2014, a short time before the emergency call was made.

[21] Prof. Mangham was asked by Dr Lyness to advise on when the boney injuries occurred. Initially, Prof Mangham said all of the fractures except the lower right proximal tibia occurred within minutes or a few hours before or after death. In relation to the fracture to the lower right tibia he said that that was an older fracture, possibly two days old. Prof Mangham gave evidence that he subsequently received a call from Dr Lyness and after receiving that call he reconsidered his opinion about the timing of the fractures and completed an addendum report. In that addendum report, he said that all of the fractures could have been sustained prior to the last two days of life, that is, before Cárágh was admitted to hospital. In relation to the timing of the bruising, Dr Lyness said that one of the bruises to the head was caused hours before death and that the other bruise to the head occurred at or about 72hrs prior to death. In relation to the iliac crest bruising, he said it was less than 72hrs before death. He could not be more precise in relation to the timing of the bruises.

[22] The medical experts also gave evidence in relation to causation. Dr Lyness and Dr Egan looked at all of the findings that were made and they took into account the expert opinions made by Dr Du Plessis about the brain injuries, Dr McCarthy about the retinal bleeds and Prof. Mangham about the fractures and the timing of the fractures. They accepted that there were a number of possibilities which could have

accounted for the cumulative injuries sustained by Cárágh. They said that before a conclusion about causation could be reached, a differential diagnosis was required.

[23] Firstly, they said that Cárágh's health should be considered. All of the prosecution medical experts were satisfied, from the history given by the parents, that Cárágh was a well child. Secondly, they then said it was necessary to then look and see if Cárágh had any natural diseases or congenital abnormalities that could cause the findings. The experts were satisfied from their examinations and/or review of the papers that Cárágh did not suffer from any natural disease or congenital abnormality. Thirdly, the experts looked to see if there could be an accidental cause for the injuries sustained. No history was given that Cárágh had been involved in an accident. There was some explanation provided by a paternal aunt that Cárágh had bumped her head off a cot although neither the prosecution nor the defence made the case that this accident caused the injuries to Cárágh. The prosecution experts were agreed that accidental causes for the findings could be excluded.

[24] Having excluded natural disease, congenital abnormality and accident, Dr Lyness and Dr Egan both concluded, supported by both Dr Du Plessis and Dr McCarthy, that having regard to the package of injuries sustained by Cárágh, the brain damage was caused by head trauma that was non-accidental. First of all, the experts looked at the triad; the swelling of the brain, the bilateral bleeding to the brain and the retinal bleeding to the eyes. Dr Du Plessis accepted that there had been a meeting of pathologists in 2009 and that highlighted that there was a disagreement about how you would interpret a finding of triad and although it was his view that there was strong evidence of there being a non-accidental injury he agreed that that should not alone be regarded as conclusive proof of traumatic head injury. Other corroborative evidence was required. In this case, he said that the fractures and the bruising were corroborative evidence.

[25] In relation to the fractures, the prosecution case was that the fractures were classic metaphyseal lesion ("CML") fractures which are twisting or shearing injuries. The prosecution medical experts said that when the fractures were taken in association with the brain injury it pointed to Cárágh being swung by a limb. If the brain injury and fractures were accepted, then taken together one possible mechanism by which Cárágh was injured was by being swung by a limb with or without being hit against a surface.

[26] Further, the prosecution experts said that the bruising corroborated non-accidental causation. When looking at the bruising to the iliac crest in combination with the brain injury they suggested that it supported the interpretation that Cárágh was shaken by gripping and forcibly shaken. The prosecution experts' opinion was that the brain injury, the fractures and the bruising demonstrated non-accidental injury either by the child being swung by a limb, the child may or may not have been hit against a surface or the child was shaken forcibly, again with or without

impact to the head. They suggested that the two bruises above the right ear could be regarded as further corroborating evidence of impact.

[27] Evidence was read by way of agreed statements from family members including Cárágh's mother, maternal grandmother and grandfather, Adrian Walsh. All of these witnesses indicated that Christopher O'Neill was a good father who took more than his fair share of night feeds and shared the care of Cárágh during her short life. Adrian Walsh's evidence was that he had never heard Christopher O'Neill losing his temper and that he had a good relationship with Tammie-Louise. Mr Cosgrove, the neighbour in the flat beneath, also stated that he never heard baby Cárágh crying before the paramedics arrived on the 5th February and had she been crying uncontrollably, as had been suggested by the prosecution, he would have heard her.

[28] Christopher O'Neill gave evidence at his trial. He also set out his case in numerous police interviews under caution. Christopher O'Neill never deviated from his account, that Cárágh began to lose breath, he gently shook her, tried to give her mouth to mouth, tried to give her a bottle and he then called an ambulance. He said he loved Cárágh and he was a proud dad. He denied that by his deliberate action he caused Cárágh's death. He denied that he did anything to cause Cárágh's death and denied that he intended to cause her any injury.

[29] At trial, it was accepted by the defence that Cárágh had sustained head injuries comprising swelling to the brain, retinal bleeding and subdural bleeding. They disputed whether the bleeds were bilateral or unilateral. The defence said it was not a classic triad case as the bleeding was only unilateral relying on the initial CT scan which identified a unilateral bleed. Dr Du Plessis said that because the bleeds were thin they were perhaps not picked up on the initial CT scan. He was confident that when he examined the findings that on death Cárágh did have bilateral bleeding. Under cross-examination, he accepted that there was a reasonable possibility that there could have been tracking or movement of blood from one side of the brain to the other after death. However, Dr Du Plessis said that even if there was a unilateral bleed this strengthened the case for trauma or impact and therefore said it was a defence "own goal". At the end of his cross-examination, Dr Du Plessis was pressed on the issue of whether in the event that the jury concluded that it could not rely upon the fractures and/or bruising would that create a problem for the triad. He said that he wouldn't be as convinced. He was asked would he have a reasonable doubt. He said he would have a reasonable doubt namely about the certainty of the triad.

[30] In respect of the boney injuries, Prof Mangham was cross-examined robustly in relation to his initial timings of the fractures. Initially, he had timed all of the fractures (except one) to either minutes or a few hours before or after death. This was regarded by the defence as significant since Cárágh spent the last two days of her life in hospital being cared for by medical staff. Therefore, if the fractures occurred at this time, Christopher O'Neill could not have been responsible.

[31] It was suggested by defence counsel that these initial findings were all the more significant since they were made at a time when Prof Mangham was in possession of a briefing letter from Dr Lyness setting out all of the background including the fact that Cárágh had been in hospital and received medical intervention until her death. Prof Mangham indicated that when he made his initial findings he had failed to take into account the fact that Cárágh had been so ill and that as a result her body was in a profound state of shock. This, he then said, would have had an impact on the manner in which the healing process occurred and as a result he changed his opinion on the timing of the fractures. He was, accordingly, of the view that all of the fractures **could** have occurred within a period of two days and therefore within a timeframe when Cárágh was in Christopher O'Neill's sole care. Defence counsel put to Prof Mangham that it was an "inconvenient truth" and that is why he changed his view regarding the timings following the telephone call from Dr Lyness.

[32] There was one fracture about which there was no controversy in terms of timing or cause. This was a fracture below the knee that was caused by the insertion of an intraosseous needle during medical treatment. Initially, Prof Mangham said that all of the other fractures occurred **after** that fracture and, therefore, all of the fractures had occurred while in hospital. Subsequently Prof Mangham had changed his opinion on that issue. Defence counsel drew the attention of the jury to the significance of this evidence.

[33] When Dr Lyness was questioned by the Trial Judge in relation to the boney injuries he said that he was sure they didn't happen in the hospital but that he found the bone aspect of the case troubling or concerning and that it wasn't "black and white". The significance of the boney injuries is clear given that it is one of the corroborating features in addition to the triad which is regarded by the medical profession as conclusive evidence of non-accidental injury.

[34] The defence also challenged the prosecution evidence in respect of the two areas of bruising relied upon, namely to the head and the iliac crest. Dr Lyness was cross-examined at length and accepted that one of the bruises to the head was caused probably a few hours before death and therefore within the time frame when Cárágh was in hospital. In relation to the other bruise to the head, Dr Lyness said in his opinion that was caused at or more than 72hrs before the date of death and, therefore, prior to the events of 5 February when Christopher O'Neill was alone with Cárágh. The defence challenged the assertion that there was any impact trauma caused to Cárágh's head. Given concessions made by Dr Lyness regarding the timing of the bruising to Caragh's head, the defence contended that the bruises were of no evidential value and therefore, given that there was no skull fracture, there was no evidence that Cárágh's head ever suffered impact trauma.

[35] In relation to the iliac crest bruising, Dr Lyness was cross-examined by defence counsel and questioned by the Trial Judge. He said that timing of bruises

was not a precise science but that the iliac bruises were up to 72hrs old. That, therefore, would leave them in a time frame where they could have occurred in hospital or while the baby was alone with Christopher O'Neill. Dr. Lyness said, in relation to the mechanism of the baby being forcibly shaken, that the iliac bruising would have been caused by holding Cárágh with the thumbs on her chest with the side of the hands down where the iliac crests are. However, when Dr. Egan gave evidence he said that this explanation was wrong. He based that on the fact that had Cárágh been held on the chest that the sides of the hands would not have reached the iliac crests and therefore that scenario was not possible. He believed that Cárágh was held by the abdomen and that the bruising was caused by the thumbs as Christopher O'Neill held the child facing him shaking her or holding her facing away from him shaking her. When questioned by defence counsel as to why there was no fingertip bruising he indicated that one does not always find fingertip bruising in shaken baby cases.

[36] A significant issue raised by the defence in the course of the trial was that despite contact with numerous medical practitioners, neither the paramedics, Dr Lamont or Dr Maney noted on any body chart any obvious bruising to Cárágh other than the marks that arose because of medical intervention. There was no noting of any other bruises or any other swelling.

[37] The defence also queried the assertion by prosecution medical experts that Cárágh had been a well child. The defence relied on evidence from Tammie-Louise Walsh that her daughter had bronchiolitis in the December before she died and in late January 2014 it had been recorded that Cárágh had reduced feeding and a painful cry. Tammie Louise Walsh also said that in January 2014 Cárágh started going into convulsions, she noticed Cárágh's complexion changing days prior to the incident on the 5 February when she became very pale looking and changed colour. Adrian Walsh also noted that Cárágh looked a bit pale on 5 February.

[38] The defence also put forward a possible explanation that Cárágh had rickets. They called Dr Ayoub, a radiologist with a special interest in metabolic bone disease, including paediatric skeletal trauma, who practises in America. He gave evidence that Cárágh had been suffering from healing rickets and in his opinion rickets could cause seizures and deformity in the bones. He said that rickets was a possible explanation for the findings of bone fractures and head injury. He indicated that the "triad" was not so definitive as suggested by the prosecution witnesses and that a broader differential diagnosis was required and that one matter which must be taken into consideration is whether Cárágh was suffering from rickets.

[39] Dr Ayoub asserted that rickets can produce life threatening conditions which can produce the physiological set up for a catastrophe that can lead to brain swelling, bleeding in the brain and bleeding in the eyes.

[40] Dr Ayoub called into question Prof Freemont's technique for diagnosing rickets because, he asserted, that technique would have decalcified the bone which

would have potentially inhibited a diagnosis. Dr Ayoub asserted that he was able to diagnose rickets from a review of the radiological scans and the papers in the case.

[41] This evidence was challenged robustly by Senior Counsel for the prosecution who queried Dr Ayoub's level of expertise in this field. He said that unlike Dr. Ayoub, Prof. Freemont for the prosecution, had looked at the actual bones, or more specifically, the growth plates, which Prof. Freemont stated was regarded was the "gold standard" for diagnosis of rickets.

[42] Counsel drew to Dr Ayoub's attention that as a result of his analysis, Prof. Freemont was certain that Cárágh was not suffering from rickets. Dr Ayoub rejected this suggestion.

[43] Following speeches by Senior Counsel for the prosecution and the Defence and summing up by the learned Trial Judge, the jury returned a majority verdict of Not Guilty of either murder or of manslaughter.

Analysis of the Criminal Trial

[44] It is clear to me that the Police Service of Northern Ireland ("PSNI") conducted an in-depth investigation into the circumstances of Cárágh Walsh's death. They engaged, and obtained reports from, eminent medical experts regarding the cause of Cárágh's death.

[45] In his autopsy report, Dr Lyness said that the cause of Cárágh's death was from a *"head injury"*. This conclusion was not disputed during the criminal trial.

[46] The focus of the criminal trial was whether it could be established beyond reasonable doubt that Christopher O'Neill caused the head injury either by assaulting Cárágh with intent to cause her death or grievous bodily harm (murder) or by assaulting her deliberately or recklessly (unlawful act manslaughter). The jury's findings of "not guilty" mean that the jury could not be satisfied, beyond reasonable doubt, that Christopher O'Neill committed either of these offences.

[47] The offence of gross negligence manslaughter, based upon Christopher O'Neill shaking Cárágh, was deliberately not left to the jury. The prosecution case was that Christopher O'Neill had swung Cárágh causing her injuries and death.

Submissions of the Interested Persons

[48] To assist me in making my decision as to whether I should hold an inquest or not, I invited submissions from Cárágh's mother and father.

[49] Counsel for Cárágh's mother filed a skeleton argument requesting that I hold an inquest. In the body of this submission, counsel accepted that the decision is discretionary but that there would be a *"very useful purpose"* in holding an inquest

"namely the need to determine the cause of the death of the deceased child". It was also submitted that: *"In addition to this, the determination of the cause of death may also reveal new evidence for the PPS to consider"*.

[50] At paragraph 6 of his skeleton argument, counsel acknowledged that it is not the function of a coroner to determine any question of criminal or civil liability. However, he said that:

> *"Any inquest must focus on matters directly causative of death. Such matters have not been addressed be the criminal trial adequately. The net result of the criminal trial has been to leave an ambiguity in the evidence that the holding of an inquest could resolve. An inquest would seek to establish the probable course of events, thereby resolving the said ambiguity in the evidence, through an investigation conducted appropriately at an inquest. Given there was an acquittal of Christopher O'Neill, there has not been a formal determination of the cause of the death of Cárágh Walsh"*

[51] Solicitors acting for Cárágh's father served a skeleton argument in which they said that there was insufficient cause to hold an inquest.

[52] They said that the question of "how" Cárágh came by her death was the subject of intense, public scrutiny during the trial of Christopher O'Neill. They drew attention to the case of *Re Howard [2011] NIQB 25* and the dicta of Treacy J that resumption of an inquest after a criminal trial;

> *"…is likely to be the exception because in most cases the criminal trial will be a sufficient exploration of the circumstances surrounding the death."*

[53] They also drew my attention to the cases of *Re McMahon [2013] NIQB 22* and *Re Downes [1998] 4 NIJB 91*.

Discussion

[54] Rule 15 of the 1963 Rules requires that an inquest shall be directed solely at determining four matters: who the deceased was and, how, when and where he came by his death. Rule 16 makes it clear that:

> *"Neither the Coroner nor the jury shall express any opinion on questions of criminal or civil liability or on any matters other than those referred to* [in rule 15]."

[55] There have been a number of decisions in Northern Ireland dealing with the discretion of a coroner to hold an inquest after the conclusion of criminal proceedings.

[56] In *Re: Downes [1998] 4 NIJB 91* the High Court considered a judicial review brought by the widow of John Downes into the refusal of a coroner to hold an inquest into the death of her husband. John Downes was shot at close range with a

plastic baton round fired by a police officer during a public order incident. The officer concerned was prosecuted for manslaughter and was acquitted.

[57] Giving his judgment Carswell J (as he then was) said at page 97:

> *"It must also follow that in deciding whether it is necessary to hold an inquest, or whether to resume an adjourned inquest, the Coroner must direct his attention to the question whether it has been sufficiently established who the deceased was, and how, when and where he came by his death. If the Coroner, after looking at the facts of the case, considers that these matters have already been sufficiently established in public proceedings, he is quite justified in taking the view that an inquest is not necessary…What is material is whether the relevant matters have been established in a manner in which the public interest has been adequately served."*

[58] Thereafter, the learned Judge approved of the approach adopted by the Coroner in that case;

> "[The Coroner] *states that he considered from the evidence in his possession whether all matters necessary to fulfill the purpose of an inquest had already been dealt with in the course of a public court hearing. He came to the conclusion that they had,* ***and that the circumstances of the death had been made publicly known by this means*** [emphasis added]*…"*

[59] The case of *Re: Howard [2011] NIQB 125* involved a challenge brought by Robert Howard to the decision of a coroner to hold an inquest into the death of Arlene Arkinson following his acquittal by a jury on a charge of murdering her.

[60] Arlene Arkinson disappeared in August 1994 and her body has never been found. The history of the proceedings in this case is complex. Initially the Coroner indicated he would hold an inquest principally to allow the family to register her death in light of the complicating factor that her body had never been found.

[61] Thereafter, the Presumption of Death Act (Northern Ireland) 2009 came into force and the Coroner rescinded his original decision since this legislation would have allowed the family of the deceased to apply to the High Court to have her death recorded. After receiving submissions from the interested persons the Coroner changed his decision again and reverted to his original determination that an inquest should be held. Mr Howard challenged that decision.

[62] In his judgment, Treacy J (as he then was) made clear that the decision on whether to hold an inquest after a criminal trial is case specific and should only be taken after a detailed examination of all relevant information. The learned Judge also drew attention to the need to look at the statutory language which requires *"sufficient cause"* for an inquest to be resumed. He said as follows at paragraph 26:

> *"In the case of a resumed inquest the test is not exceptionality but "sufficient cause". Each case must be judged on its own facts and circumstances. It may be that*

an inquest following a criminal trial is the exception- but that is a consequence, not a test or threshold that has to be met. It is likely to be the exception because in most cases the criminal trial will be a sufficient exploration of the circumstances surrounding the death. But this will not always be the case and the rules are careful to preserve the possibility of resuming an inquest after a criminal trial whenever the Coroner is "of the opinion that there is sufficient cause to do so".

[63] The learned Judge continued at paragraph 36 to consider the nature and extent of a coroner's discretion. He considered that Rule 13(2) confers a very broad discretion that would be difficult to challenge;

> *"Legislation and statutory systems place such discretions in the hands of experienced personnel, who are specialists in their own fields of endeavour. It would be quite wrong if every exercise of their judgement was open to challenge in the Judicial Review Court. For this reason, broadly phrased, statutory discretions whilst not exempt from challenge on public law grounds will require compelling evidence to establish irrationality or legal perversity. There is nothing in the conduct of the Coroner in the present case which falls within that very limited category."*

[64] The learned Judge concluded that nothing in the decision making of the Coroner in that case fell into the category of irrationality or legal perversity and accordingly he dismissed the challenge to the decision to hold an inquest. He concluded his judgment with a reminder to all public authorities involved in the inquest process saying that;

> *"They must also anxiously weigh in the balance the fundamental right of grieving families to have a timely answer to that most human of questions: "what happened to my loved one?".*

[65] In *Re McMahon [2013] NIQB 22,* a further domestic case involving the question of resuming an inquest after the conclusion of criminal proceedings, the High Court considered a challenge to the refusal of a coroner to hold an inquest into the death of Gerard Devlin.

[66] Mr Devlin was killed on the 3rd February 2006 and a number of persons were charged with his murder. Ultimately the prosecution accepted pleas to lesser offences. One defendant pleaded guilty to the manslaughter of Gerard Devlin and received a sentence of 11 years imprisonment.

[67] The Coroner outlined in correspondence that he would not conduct an inquest as he considered that the criminal proceedings, including the plea and sentence hearing, had led to a situation where, *"all the facts relevant for inquest purposes have been aired in the course of criminal proceedings."*

[68] In further correspondence the Coroner said:

> *"Not only has the means by which he met his death been ascertained but the person responsible for his death has been identified and dealt with by the courts. In the absence of any State involvement in the death and in the absence of any wider public interest issues which would demand further enquiry in order that necessary lessons may be learned for the better protection of human life in the future I am of the opinion that there is no sufficient reason to justify the holding of an inquest."*

[69] One ground of challenge was that the Coroner, in refusing to hold an inquest, had interpreted the issue of "how" the deceased came by his death in an overly restrictive manner and that the failure to hold an inquest was a breach of article 2 of the European Convention on Human Rights ('the Convention'). In rejecting that argument Treacy J cited the case of *Niven [2009] CSOH 110* in which Lord Malcolm said at paragraph 55:

> *"…It has often been said that in the normal course of events a criminal trial with an adversarial procedure before an independent and impartial judge must be regarded as furnishing the strongest safeguards of an effective procedure for the finding of facts and the attribution of criminal responsibility.* ***The Strasbourg Court has stressed that the obligation to investigate is 'one of means, not result'. In other words the issue is whether the form and nature of the investigation is appropriate in all the circumstances. A failure to achieve a conviction or to obtain answers to the main questions does not automatically lead to non-compliance with article 2****. There will be other situations where a conviction after criminal trial is not sufficient."* [emphasis added]

[70] In drawing attention to this aspect of the *Niven* judgment, the learned Judge sought to dispel the notion that the State, in order to satisfy its obligations under article 2, is obliged to provide a precise answer as to how the deceased came by his death. This is not required. What is required is a detailed, effective and public investigation into the circumstances of a death. The European Court of Human Rights has consistently said that the article 2 obligation is one of means not results.

[71] Treacy J further referred to paragraphs 93-95 of the Niven case;

> *"A criminal investigation which is capable of identifying responsibility for a death would be sufficient even if it fails to identify a culprit or the cause of death… article 2 does not impose an obligation to explain all suspicious or unnatural deaths…The fact that there remain unanswered questions does not cast doubt on nor undermine the ability of the criminal justice system in Scotland to operate in a manner which is capable of identifying criminal liability and thereby enforcing the deterrent effect of the crimes of murder and culpable homicide."*

[72] Treacy J refused the application for judicial review and drew attention to his earlier judgment in *Re: Howard* where he had said that:

> *"in most cases a criminal trial will involve a sufficient exploration of the circumstances surrounding the death."*

[73] He concluded by saying;

> *"[The Coroner]…was in my view entitled to conclude that there had been a sufficient exploration of the circumstances surrounding the killing of the deceased rendering an inquest unnecessary."*

[74] It seems to me that a number of key principles can be distilled from the authorities discussed above;

(i) In most cases a criminal trial will involve a sufficient exploration of the circumstances surrounding a death;
(ii) A coroner must be satisfied there is "sufficient cause" to resume, or hold, an inquest following the conclusion of criminal proceedings;
(iii) Each case must be considered on its own facts; and
(iv) The discretion afforded to a coroner is very broad.

[75] In terms of the prosecution case against Christopher O'Neill, the focus was not to determine how Cárágh sustained the injuries which caused her death. Instead, the prosecution tried to prove to the jury that Christopher O'Neill caused Cárágh's death by reference to the injuries she sustained. The defence case did not try to establish the cause of Cárágh's death either, rather, the defence sought to challenge the prosecution case and establish a reasonable doubt in the minds of the jury. Each of the expert witnesses gave evidence in open court as to their opinion on the cause of Cárágh's death and they were each subject to rigorous and painstaking cross-examination about their conclusions.

[76] Having considered the trial transcript it seems to me that the trial process explored, in great detail, the medical and forensic evidence surrounding the circumstances of Cárágh's death. This evidence was, of course, publicly examined and reported in the media. The trial process did not, however, try to establish a cause of death.

[77] Since there was no involvement of State agents there is no question of an inquest being required to examine the State's acts or omissions. Any inquest held would not be, what has become known as, "an article 2 inquest".

[78] Christopher O'Neill was found not guilty of both the murder and manslaughter of his daughter. In the case of *Moss v HM Coroner for the North and South Districts of Durham and Darlington 2008 EWHC 2940* the English High Court considered a judicial review of a refusal to hold an inquest after a Dr Martin was acquitted of the murder of three of his patients by administering medication to them. In the course of that judgment Underhill J accepted that the acquittal for murder authoritatively established that Dr Martin did not murder his patients and that; *"Any inquest would have to proceed on the basis that Dr Martin did not murder Mr Moss".*

[79] Underhill J arrived at this view after considering section 16(7)(a) of the Coroners Act 1988 (since replaced by Paragraph 8(5) of Schedule 1 to the Coroners and Justice Act 2009) "the 2009 Act") which mandates that the: *"findings of the inquest as to the cause of death must not be inconsistent with outcome of the relevant criminal proceedings…"*. The learned Judge was also of the opinion (at paragraph 15 of his judgment) that even if section 16(7)(a) was not in force the principle would still apply, presumably under the common law. The learned Judge did not, however, provide an authority to support his view that the common law would not allow an inquest finding inconsistent with criminal proceedings in the absence of an explicit legislative provision. It is important to note that neither the 1988 or 2009 Acts apply to Northern Ireland. We do not have a similar provision. I have been unable to find a common law authority to support the opinion of Underhill J that there exists a common law power similar to the legislative provision which would be binding on a coroner in Northern Ireland.

[80] Therefore, in England and Wales in accordance with the 2009 Act, if an inquest were to be held inquiring into the death of a child in similar circumstances to Cárágh, it would have to proceed on the basis that an acquitted accused did not murder or unlawfully kill the child. This would undoubtedly limit the scope of the inquest.

[81] It is important to appreciate that, although coronial law in Northern Ireland is similar in many ways to that in England and Wales, there are a great many differences. For example, coroners in Northern Ireland, by virtue of the 1959 Act, enjoy a much wider jurisdiction in terms of the type of death we can investigate. A coroner can inquire into any death which requires investigation or which occurs by unfair means. These provisions do not exist in England and Wales. Coroners in Northern Ireland can hold a full inquest into a stillbirth. In this regard we are unique since no other country allows such an investigation. Coroners in Northern Ireland provide detailed narrative findings and not short form conclusions as in England. It is, therefore, not unusual to find statutory, and common law, differences of approach between England, Wales and Northern Ireland.

Conclusion

[82] In his written argument, Counsel for Cárágh's mother suggests that his client still does not know how her daughter came by her death. Solicitors for Christopher O'Neill assert that the criminal proceedings have established, without question, how Cárágh came by her death. She died from head injuries.

[83] It seems to me that Cárágh's mother can legitimately claim that there has been no public finding which explains Cárágh's death. This is because a jury found Christopher O'Neill not guilty and to do that did not have to provide any sort of explanation. As we know, notwithstanding article 6 of the Convention, juries in

criminal cases, unlike Coroners Inquests, do not need to provide reasons for their verdicts.

[84] Counsel for Cárágh's mother further suggests that if an inquest takes place it may yield further evidence which can be considered by the PPS. This is clearly not a proper consideration for me to take into account and in any event is entirely speculative. An inquest must never be used as a vehicle for gathering further evidence in the hope that future proceedings, civil, criminal or otherwise, will take place.

[85] I remind myself of Treacy J's concluding remarks in the *Re: Howard* judgment, that it is a basic human desire to want to know what happened to one's loved one. In reaching my decision here, I pose a number of questions;

(1) Did the criminal trial properly answer the question of how Cárágh sustained the head injuries from which she died?

(2) Could an inquest answer this question, notwithstanding the position that Mr O'Neill has been acquitted of murdering or unlawfully killing daughter?

(3) Is there a "sufficient cause" to hold an inquest?

[86] The answer to the first question seems to me to be "no". I can see from the trial transcript that the evidence was examined in excruciating detail and this has been confirmed by my Counsel who considered the transcript in its entirety. The prosecution of Christopher O'Neill was based upon an assertion that he had deliberately caused injuries to his daughter which resulted in her death. The prosecution closed its case to the jury by telling them that it was the prosecution contention that Christopher O'Neil deliberately caused injuries to Cárágh. The option of Christopher O'Neill accidently causing the injuries was deliberately not left to the jury. Indeed, this issue was the subject of lengthy discussion between counsel and the Trial Judge. Prosecution counsel confirmed that the jury should not be asked to consider if, in trying to resuscitate Cárágh by shaking her, Christopher O'Neill had accidently caused her head injuries. Cárágh's family does not, therefore, have an answer to the question of how Cárágh sustained her head injuries.

[87] The second question must be answered by considering what an inquest could usefully explore taking into account the acquittal of Christopher O'Neill. Could an inquest ask how Cárágh sustained her head injuries by looking at all of the potential causes? I consider that the answer is "yes". I am clearly not bound by the provision applicable in England and Wales by virtue of the 2009 Act and I can see no common law power which would limit the scope of any inquest to issues not discussed at trial.

[88] Although the evidence was tested in detail no proper independent conclusion has ever been provided explaining the cause of Cárágh's death. The standard of

proof at an inquest is the balance of probabilities and not beyond reasonable doubt. The focus at inquest will be on establishing not just the medical cause of Cárágh's death, which we know to be head injuries, but also the reason for those head injuries. I consider that my findings are only restricted by Rule 16 of the 1963 Rules – my finding will not express any opinion on criminal liability.

[89] Taking into account all of the above I do consider there to be "sufficient cause" to hold an inquest inquiring into the death of Cárágh Walsh. Cárágh Walsh was a 14 week old member of our community and it is right that when a member of our community dies suddenly or in suspicious circumstances that an explanation is provided for the death. It is right that her family know, as far as possible, how she died.

[90] In most cases a criminal trial will involve a sufficient exploration of the circumstances surrounding a death and an inquest following a full criminal trial will remain the exception. However, it is my view that the criminal trial of Christopher O'Neill, did not provide sufficient answers to the family or the public. I consider that Treacy J was entirely correct when he said, in the Re: Howard case, that grieving families are entitled to have a timely answer to that most human of questions: "what happened to my loved one?". I do not think that Cárágh's family has been given that answer yet and I intend to try and provide answers by way of an inquest into her death.