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(subject to editorial corrections)*

IN THE MATTER OF AN INQUEST INTO THE DEATH OF PATRICK PEARSE JORDAN

HORNER J

Framework of Judgment

HORNER J

A. INTRODUCTION

[1] This is an inquest into the death of Patrick Pearse Jordan Deceased ("the Deceased") who died aged 22 years. He was shot by Sergeant A of the Headquarters Mobile Support Unit ("HMSU"), a section of the Royal Ulster Constabulary ("RUC") on 25 November 1992 on the Falls Road, Belfast shortly after 5.00pm. The original inquest commenced on 4 January 1995. That was adjourned part heard. A further inquest held at the end of 2012 was set aside by the High Court and the Court of Appeal. The inquiry into the death of the Deceased has been beset by numerous legal challenges.

[2] Girvan LJ giving judgment in the Court of Appeal in In the Matter of an Application by Officers C, D, H and R Serving and Retired Members of the Royal Ulster Constabulary and Police Service of Northern Ireland for Leave to Apply for Judicial Review and Others [2012] NICA 47 said at paragraph [30]. (Emphasis Added):

> "The conduct of inquests into contentious deaths occurring during Northern Ireland's troubled times and the seemingly endless satellite litigation generated in relation to them call to mind aspects

> of Jarndyce v Jarndyce which Dickens so graphically described in his novel. When questions arising in the inquest into the death of the Deceased Patrick Pearse Jordan (who died as long ago as November 1992) were before the House of Lords in 2007 the inquest, which had opened in January 1995, was described by Lord Bingham as **lamentably delayed**. A further five years have elapsed. There appears to have been a large number of judicial review applications generated in the proceedings. There have been on-going delays in the furnishing of material and interminable interlocutory disputes in relation to the proposed conduct of the inquest. Delay in any inquest may well lead to the unavailability of witnesses and inevitably will lead to the actual or claimed fading of witnesses' memories in relation to significant facts. Huge quantities of documents have been generated in the course of procedural wrangles in these cases quite apart from the investigation of substantive issues. Enormous amounts of public funds have been spent in the pursuit of issues subsidiary to the central questions to be determined in the inquests. Coroners have been frustrated in their attempts to get the inquests up and running. Ironically the pursuit of procedural correctness in such inquests by parties intent on ensuring that they are compliant with Article 2 requirements has resulted in delays which themselves undermine the very object which the satellite litigation has sought to achieve. Sometimes, as Voltaire said, the best can be the enemy of the good."

[3] The comparison with Jarndyce v Jarndyce is well made. By 2014 when the Court of Appeal heard In the Matter of Three Applications by Hugh Jordan for Judicial Review [2014] NIQB 11 there had been 24 judicial reviews, 14 appeals to the Court of Appeal, one hearings in the House of Lords and one hearing before the European Court of Human Rights. The original inquest was adjourned. There was another inquest held in 2012 which was quashed by Stephens J following a judicial review. That decision itself was appealed to the Court of Appeal and the Court of Appeal provided further guidance on the future conduct of the investigation into the Deceased's death.

Delay, the enemy of justice, has been an inevitable consequence of all these proceedings. Furthermore the costs of this litigation have grown exponentially. As Girvan LJ said paragraph [29]:

> "In publicly funded litigation such as the present the ready availability of public funding sets no monetary limit to the litigation."

In Jarndyce v Jarndyce it was the fact that the legal costs had eaten up the entire estate which brought the proceedings to an end. Resources are finite and the public funding of seemingly endless litigation is likely to deny other worthy causes financial support that they sorely need.

[4] The case was heard by me, a High Court Judge, sitting as a Coroner without a jury. This matter is governed by Section 18 of the Coroners Act (Northern Ireland) 1959. Section 18(1) provides categories of cases in which a jury must be sworn. It is agreed and accepted that this case does not fall within that provision. Section 18(2) confers a discretion on the Coroner to have a jury summoned in cases falling outside the mandatory categories. In November of last year, the representatives of the next of kin communicated their view that it would not be appropriate to summon a jury in this particular case. The PSNI stated it was neutral in the matter. I determined that a jury would not be summoned to hear the case and that it would therefore be heard by me sitting as a Coroner on my own.

[5] Rule 15 of the Coroners (Practice and Procedure) Rules (NI) 1963 governs the matters to which proceedings and inquests shall be directed. This Rule provides as follows:

> "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."

Rule 16 goes on to provide that:

> "Neither the Coroner nor the jury shall express any opinion on questions of civil or criminal liability or on any matter other than those referred to in the last foregoing Rule."

[6] 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.

[7] Fortunately in this case the scope of this inquest has been agreed between the parties. It is set out in paragraphs [46]-[48] of the judgment of Stephens J in The Matter of Three Applications by Hugh Jordan for Judicial Review [2014] NIQB 11:

> "[46] In relation to the shooting of the Deceased those matters [factual questions arising for consideration] were as follows:
>
> (a) why Sergeant A had a round in the breech before he got out of his car;
>
> (b) whether Sergeant A shouted "police, halt" before he fired;
>
> (c) whether Sergeant A issued any warning that he was going to fire;
>
> (d) whether the Deceased did anything that, as a matter of objective fact, posed a threat to Sergeant A or any other police officer;
>
> (e) whether Sergeant A's view of the Deceased's hands was obstructed;
>
> (f) whether the Deceased turned around to face towards Sergeant A;
>
> (g) whether the Deceased was facing Sergeant A when Sergeant A fired at him;
>
> (h) whether Sergeant A honestly believed that the Deceased did anything that posed a threat to him or any other police officer;
>
> (i) whether Sergeant A selected automatic fire rather than single shot deliberately or accidentally;

(j) whether Sergeant A was justified in firing in breach of the RUC Code of Conduct governing the discharge of firearms;

(k) whether Sergeant A could have taken another course of action, such as using the protection of his armoured vehicle as an alternative to firing at the Deceased.

[47] In relation to the debrief those factual issues were:-

(a) whether it was appropriate to conduct a debrief prior to the interviewing of witnesses by CID;

(b) whether the primary purpose of the debrief was to facilitate the exoneration of Sergeant A;

[48] In relation to planning and control those factual issues were:-

(a) whether there was a clear line of command within the operations room;

(b) whether the TCG [that is the Tasking and Co-ordinating Group] exercised any or any adequate control and supervision over the conduct of officers on the ground;

(c) whether TCG officers or Officer M gave any advice, guidance or directions to the police officers on the ground in relation to stopping the car and the importance or otherwise of stopping the driver;

(d) whether the decision to stop the vehicle by way of a casual stop, as opposed to a vehicle check point, and the absence of any clear direction as to what should happen in the event that the driver ran away caused or contributed to the death of the Deceased; and

(e) whether, therefore, the planning and control of the police operation was such as to minimise

recourse to lethal force."

It is intended to address all these issues so far as it is possible in the course of this judgment.

[8] I wish to record my gratitude to the legal representatives who acted for the next of kin, the PSNI and the Coroners Service. In circumstances which were highly charged, all counsel involved behaved impeccably, discharging their duties to their clients and to the inquest with great distinction. A prodigious amount of work has been undertaken by all the legal representatives in this inquest. Numerous points and counterpoints have been made, many very attractively and all with considerable skill. However, it is simply not possible for me to deal with each of the arguments on an individual basis otherwise this judgment, which is already far too long, will assume wholly unreasonable proportions. But, I do want to assure the parties that each argument has been considered with care, even though in the interests of brevity not every one has been specifically referenced. I have studied the very helpful and thorough closing submissions from the next of kin and the PSNI, running to 173 pages and 119 pages respectively, and the supplementary written submissions of some 20 pages from the next of kin on the evidence of the civilian witnesses, on many occasions.

B. GLOSSARY OF TERMS AND ACRONYMS

[9] For ease of reference I have set out a glossary of terms and acronyms that I have used in the judgment. They are:

A.C.P.O.	Association of Chief Police Officers.
A.S.U.	Active Service Unit. Term used to describe a group or members of a group engaged in terrorist activity.
Army Liaison	An Army Officer (normally of the rank of Major) who acts as a liaison officer within the Tasking and Co-Ordinating Group (TCG). Liaises with all army agencies and with officers in charge of TCG.
C.I.D.	Criminal Investigation Department. Part of the Police Force. Dealt with investigations into crimes of particular seriousness.
C.S.I.	Crime Scene Investigation. Officers/Police staff who make scientific examinations of crime scenes. See also 'S.O.C.O.' below.
Call Sign	Name used to describe a particular vehicle containing Police Officers deployed on operations. Would also be given a number e.g. "Call Sign 8".

D.P.P.	Director of Public Prosecutions. Senior Government law officer whose functions and responsibilities are established by statute (then the Prosecution of Offences (Northern Ireland) Order 1972).
ECHR	European Convention on Human Rights.
ECtHR	European Court of Human Rights.
'E' Department	See Special Branch (below). H.M.S.U. Headquarters Mobile Support Unit. Units (comprising police officers) that were available for rapid deployment on operations. Had a wide range of functions including the prevention and detection of terrorist crime, serious crime and road traffic offences. Provided support for specialist surveillance teams. Normally deployed in uniform. Officers in H.M.S.U. tended to be highly trained.
P.I.R.A.	Provisional IRA/Irish Republican Army. Terrorist organisation dedicated at that time to the overthrow of NI state by violence.
P.O.N.I.	Police Ombudsman for Northern Ireland. Independent appointed official who has responsibility for investigating the activities of the Police. Came into existence in November 2000.
P.S.N.I.	Police Service for Northern Ireland, previously known as the R.U.C. until November 2001
R.U.C.	Royal Ulster Constabulary. Police force for Northern Ireland at the material time. Became the PSNI in November 2001.
S.O.C.O.	Scenes of Crime Officer. Officer who makes scientific examinations of crime scenes. See also 'C.S.I.' above.
Special Branch	Specialist police department. Also known as 'E' Department. Gathered intelligence on terrorism and serious crime. Liaised with other police and army agencies.
Stalker Sampson	Term used to describe extensive investigations into the R.U.C. carried out by two Senior Police Officers from Forces in England, namely John Stalker and Colin Sampson. The investigations focused on three different fatal shooting incidents involving the police within a six week period in late 1982.

T.C.G. Tasking and Co-Ordinating Group. A group to promote efficient working and liaison between the Army and Police. Consisted of both Army and Police staff. Processed and shared intelligence from the various areas of Northern Ireland and co-ordinated operations.

V.C.P. Vehicle Check Point. The formal stopping of a vehicle or vehicles by either Police Officers or Army personnel. Powers to stop vehicles contained in statute.

C. BACKGROUND INFORMATION

[10] The Deceased lived with his parents at 7 New Barnsley Drive, Belfast. On 25 November 1992 he was 22 years of age. Prior to that date he had not attracted the attention of the security forces either as a consequence of any suspected involvement in terrorist or criminal activity.

[11] This inquest occupied a total of 16 days from 22 February to 21 April 2016. There have also been other hearing days devoted to the issues of public interest immunity, anonymity and screening. Following the conclusion of the evidence I was given detailed written submissions from counsel for the next of kin and counsel on behalf of the police and the Ministry of Defence. I then had the opportunity to consider those submissions in advance of the oral submissions made by counsel on 20 May 2016. Following the hearing I have read and re-read over 5,000 pages of evidence, which include transcripts of previous inquests into this killing together with hundreds of pages of legal authorities.

[12] The following table is a synopsis of the main police and military witnesses who made statements and/or gave evidence at the inquest.

Witnesses	**Summary of the role of each witness**
Sergeant A	Shot and killed the Deceased. Was the front seat passenger in Call Sign 8. The most senior officer in Call Signs 8 and 12 and in charge of those 2 vehicles 'on the ground'.
Officer B	Rear seat passenger in Call Sign 8.
Officer C	Driver of Call Sign 8. Call Sign 8 forced the Orion driven by the Deceased off the road prior to the shooting.
Officer D	Front seat passenger in Call Sign 12. After the shooting drove Call Sign 12 away from the scene prior to the arrival of the CID.
Officer E	Driver of Call Sign 12. Call Sign 12 was

	behind Call Sign 8 at the time it forced the Orion off the road. Call Sign 12 collided with the rear of the Orion.
Officer F	Rear seat passenger of Call Sign 12.
Officer H	HMSU Sergeant who attended at the scene after the shooting. Directed Call Sign 12 to be moved.
Officer M	HMSU Inspector based at TCG headquarters. Directed communications and coordinated HMSU units 'on the ground'.
Officer Q	HMSU Officer based at TCG headquarters Castlereagh. Assisted in running of a 'desk' i.e. to monitor and assist with radio communications and compiling the HMSU log.
Officer R	Sergeant in HMSU who gave briefings and deployed Call Signs out of the police station.
Officer V	Head of HMSU. Off duty on the day of the shooting. Was contacted shortly after the shooting and went into work. Attended a debrief and also liaised with Sergeant A and took medical advice.
Officer AA	Detective Inspector AA in 'E' Department RUC. The second most senior TCG Officer at TCG headquarters. Along with AB had overall responsibility for the planning and control of the operation.
Officer AB	Detective Superintendent AB in E Department RUC. The most senior TCG Officer at TCG headquarters. With AA had overall responsibility for the planning and control of the operation.
Soldier V	Army Liaison Officer responsible for liaison in TCG between Army surveillance and E Department.
Soldier X	Undercover soldier who was driving a car several vehicles behind Call Sign 12 at the time of the stop of the Orion. Observed some of the events after the Deceased left

	the Orion. Performed a U-turn and left the scene without attending at the scene.
Soldier Z	Undercover solider on general surveillance duties at 4-6 Arizona Street.
William Lowry	Chief Inspector of the RUC who attended the scene shortly after the incident. Took first account from Sergeant A.

There were also a number of civilian witnesses who saw the events of 25 November 1992 unfold. They were Mr Hugh Malone, Mr Gary Brown, Mr Ciaran McNally, Mr Lawrence Moylan, Mr Emmanuel Cullen, Mr James McAllister and Mr Patrick McKeown. In addition medical and scientific experts provided reports and some were called to give sworn testimony.

[13] It is not in dispute that shortly after 5.00pm on 25 November 1992 a car being driven by the Deceased was forced off the road by a police car. The Deceased ran from his car and was then shot by Sergeant A, a member of the RUC. The Deceased was gravely injured and collapsed and died very shortly after being shot.

[14] The police officers centrally involved in this case were members of the HMSU. The HMSU was a group of around 60 uniformed Officers split into 3 teams. They were deployed alongside surveillance teams and were able to react to situations as and when they arose. The nature of HMSU's work meant that its officers were often engaged in dangerous situations involving terrorist activity. The officers who comprised the HMSU were volunteers and tended to be the more highly trained and experienced officers within the RUC. They appeared to regard themselves as an elite body within that organisation. I will discuss the structure of the HMSU in more detail later on in this judgment.

[15] Shortly before the shooting the Deceased had been driving, and was the sole occupant of, a red Ford Orion Reg Mark BDZ 7721 ("the Orion"). The Orion had been hijacked by PIRA earlier that day.

[16] On the morning of 25 November 1992 the RUC suspected on the basis of what it considered to have been reliable intelligence that there was to be a movement of explosives and/or arms ("munitions") later that day from West Belfast by PIRA. It was thought that this movement of munitions would involve the area around Arizona Street, West Belfast. Arizona Street was known to the RUC and the Army as a place where PIRA would engage in terrorist related activity involving the preparation and movement of munitions.

[17] As was common practice at the time, the RUC (and in particular the HMSU) worked in liaison with the Army. Detective Inspector AA was working in the Command Room at the Belfast Regional Headquarters at Castlereagh. He was

effectively in charge of the RUC officers in the HMSU who were deployed in the operation. During the course of the day he liaised with his senior officer, Detective Superintendent AB, who would have issued instructions from time to time. Army personnel were also working within the Command Room. Soldier V was the Army liaison officer on duty in the Command Room that day. I will discuss the set-up of the TCG later in this judgment.

[18] Detective Inspector AA requested that military surveillance be performed in the Arizona Street area. HMSU officers were to support that Army surveillance. Soldier Z was one of those providing surveillance information about what was happening in Arizona Street that afternoon.

[19] As officers came on duty during the course of the day they were given briefings by Sergeant R. He deployed a number of call signs, and in particular Call Signs 8 and 12, from police HQ to west Belfast to assist in the Arizona Street surveillance operation. The briefings included information relating to the ongoing surveillance operation and to the expected movement of munitions from West Belfast. Officers were deployed to take part in this ongoing operation. Sergeant A and Officers B and C were deployed as a group in a red Ford Sierra Reg Mark WXI 3711 and collectively known as "Call Sign 8". Officers D, E and F were deployed in a dark blue Ford Sierra Reg Mark XXI 8693 known as "Call Sign 12".

[20] Officer C was the driver of Call Sign 8. Sergeant A was the front seat passenger and Officer B sat in the rear of the car behind Sergeant A. In Call Sign 12 Officer E was the driver, Officer D was front seat passenger and Officer F was the rear seat passenger. He sat behind the driver.

[21] Sergeant A was the most senior officer in the two Call Sign cars and was, as a result, in overall charge as between the two vehicles. He had a wealth of experience gained over the years dealing with many terrorist incidents. Officers A to F were all HMSU officers and were dressed in police uniform. All were armed with a revolver and also a Heckler and Koch MP5 gun.

[22] The Heckler and Koch MP5 has three firing modes: safe, single shot and automatic. When in single shot mode only one round is fired per activation of the trigger. To fire more than one round in that mode requires repeated and separate activations of the trigger. In automatic mode the weapon will fire repeatedly with one continued activation of the trigger. In this mode a large number of rounds can be fired in quick succession. At the 2012 inquest, the expert witness, Mr Boyce, explained that such a weapon is capable of firing at a rate of 800 rounds per minute. The timing for 5 rounds is thus .375 of a second and for one round is .075 of a second. The modes are selected by the position of a switch on the right hand side of the gun, placed for easy access by the right thumb of the user. I was shown a weapon of similar but not identical construction. I did not see the actual weapon used. The evidence from the expert witness, Mr Boyce was that the pressure necessary to switch the gun between the different modes was light and equivalent to

activating a light switch. I found this to be a reasonable comparison when I was shown how the mechanism worked on an unloaded gun in court. I was told by Sergeant A that the mechanism of the actual gun was worn by use and would have required less force to change the mode of operation than the one given to me. There is no expert evidence to support this claim.

[23] At about 3.40 pm there was a report from military surveillance that two men and a red Orion were seen in the area of the Whiterock Leisure Centre who were thought to be engaged in paramilitary activity. Military surveillance was tasked through the Army liaison officer to attend the area but it seems that the Army liaison officer lost track of the Orion.

[24] Military intelligence identified one of the persons "using" the Orion as DP2. He was a person with a relevant history of suspected involvement in terrorist activity. It was thought that he had been a Quarter Master in PIRA. DP2 should not be confused with DP1, a name, which appeared in the original military briefing after the shooting and who was said to be the Deceased. His name was subsequently scored out and the name of the Deceased inserted. It is easy to see how DP1 and DP2 could be confused, both having the same surname but different Christian names.

[25] After the Deceased's death PIRA claimed that he was a volunteer, but as I have recorded prior to that his behaviour had not come to the attention of the RUC or Army in connection with any terrorist or criminal activities.

[26] It is not contested that the Deceased was acting on behalf of PIRA that day. It certainly suited PIRA to have drivers who were unknown to the security forces acting on its behalf. It is probable that the Deceased was the unknown person seen with DP2 at the Whiterock Leisure Centre on that afternoon by the surveillance officer. I will come back to examine the Deceased's role in what took place on the afternoon of 25 November 1992 in some detail later on in this judgment. It is sufficient to record at this stage that PIRA's dirty work and the consequent risk of arrest or worse had been farmed out by its senior members to a young man scarcely out of his teens who in his naivety may not have appreciated the risks he was running. However, whatever his role, he was actively engaged in serious terrorist activities on that day and these could ultimately have resulted in widespread damage and mayhem, perhaps causing injury or death to civilians and security force members alike. This is a matter I will come back to later on in this judgment.

[27] Around this time Call Signs 8 and 12 (together with two other Call Sign vehicles) were deployed to go and stop the Orion car. Call Signs 8 and 12 left Woodbourne Police Station and drove to Andersonstown Police Station. As sight of the Orion had been lost the initial order to stop the Orion was rescinded.

[28] At approximately 4.30pm the Orion was again seen by surveillance. At this time it was in the area of numbers 2 and 4 Arizona St. The sighting of the Orion

coincided with what was thought to be intense PIRA activity at Arizona St. The Orion then left Arizona St and headed towards the Upper Springfield Road area and sight of the vehicle was again lost.

[29] The Orion returned to Arizona Street at about 5.00pm. The Orion was in Arizona Street for a few minutes before being observed to leave at about 5.08pm. D/Supt AB requested that the HMSU perform a stop of the Orion. It had been identified that the rear lights of the Orion were not working and this was to be used as a reason for stopping the car. The stop was to be a 'soft stop', that is an indication was to be given to the driver of the Orion to pull over on the basis of the car's defective rear lights. It was anticipated and assumed that he would do so as ordered. The Orion was then to be checked and the driver of the Orion identified. The results of the stop were to be reported back to the control room. It was anticipated that, barring the discovery of any illegal materials in the Orion, the driver would be identified and then allowed to continue. It was not known whether the Orion was carrying munitions. However, the usual practice by PIRA was to give a car carrying munitions a "scout" car which would travel ahead. The fact that (as it would appear from the evidence) the Orion was not acting in conjunction with any other motor vehicle at the time of the proposed stop was a strong indicator that at this stage it was not being used to ferry munitions. The expectation based on other successful counter terrorist operations was that the driver would stop when requested to do so. On the evidence before me D/Superintendent AB's decision to affect a soft stop seemed reasonable. This left it up to the very experienced Sergeant A who was in command on the ground of Call Signs 8 and 12 to decide how to react in the unlikely event that a soft stop could not be effected. This again seemed a reasonable way to proceed.

[30] As set out above, there had been information at around 3.40pm suggesting that the user of the Orion was DP2. All of the officers in Call Signs 8 and 12 denied being told that surveillance had identified DP2 as using the Orion at the Whiterock Leisure Centre. The same is true of Officers M and Q who were running the HMSU Liaison Group and the officers in charge of TCG. I will come back to address this issue in rather more detail later on in this judgment.

[31] At this time Call Signs 8 and 12 were in a state of readiness and parked outside Andersonstown Police Station, with Call Sign 8 in front of Call Sign 12. Call Sign 8 was to the front as that was the car in which Sergeant A was travelling, and he was in charge 'on the ground' of all the other police officers. It is clear that the giving and rescinding of orders in respect of the Orion understandably served to heighten the tension and anxiety felt by those police officers who were in Call Signs 8 and 12.

[32] These events occurred shortly after 5.00pm. The Falls Road is and was at that time a major arterial traffic route into and out of the city. At 5.00pm on the day of the shooting there was a lot of traffic heading in both directions on the road. For ease of reference I have referred to the 2 sides of the road as 'countrywards' (i.e. the

carriageway heading generally south west and away from the city) and 'citywards' (i.e. the carriageway heading generally north east and towards the centre of the city). The road has 3 lanes, 2 heading in the citywards direction and one heading country wards. The 2 citywards lanes are divided by a white dotted line. There is a further white broken line dividing the citywards and countrywards carriageways. There are pavements on each side of the carriageway, raised up from the carriageway and edged by continuous kerbstones. I visited the scene of the fatal shooting during the course of the inquest. I found that this visit provided a more reliable way of assessing distance and helped me to understand the various sketch maps and photographs produced in evidence in this case. It is clear that the final events leading to the Deceased's death were played out both within narrow confines and a short timeframe.

[33] The road conditions were wet although it does not appear to have been raining at the time of the incident. By about 5.00pm it was substantially dark and the street lights on the Falls Road were illuminated.

[34] Officers observed the Orion drive citywards on the Falls Road. Call Sign 8 entered the carriageway and was positioned directly behind the Orion as it drove citywards on the Falls Road. Call Sign 12 was directly behind Call Sign 8.

[35] As noted above, the citywards carriageway of the Falls Road has two lanes. The Orion was in the nearside lane and Call Sign 8 was behind it. Call Sign 8 flashed its headlights indicating to the Orion to stop. The Orion did not stop so Call Sign 8 was driven into the offside lane and drew alongside the Orion. Eye contact was made between Sergeant A in the front passenger seat of Call Sign 8 and the Deceased. Following this eye contact, the Deceased slowed the Orion and then drove off at speed pursued by Call Sign 8 and Call Sign 12. The refusal of the Deceased to stop and his determination to escape seems to have confirmed to the police officers that he was on a terrorist mission and that there was good reason to suspect that the Orion was carrying munitions.

[36] Call Sign 8 accelerated up alongside the fleeing Orion and forced it to stop by ramming it. Call Sign 12 was some distance behind and it followed up in the outside lane, stopping adjacent to and overlapping with Call Sign 8. The Deceased ran from the Orion and was shot in the back by Sergeant A. Those are the basic facts. It is the task of this inquest to try and determine as best as is able, what happened leading up to the forced stop, and in particular, during that critical period of a matter of seconds between the Deceased leaving his Orion and collapsing on the far side of the road, dead. Such findings must be grounded on reliable evidence and not on speculation or guess work and must be proved to the requisite standard, the balance of probabilities.

[37] The Deceased did not move from the point he collapsed on the ground. He ended up lying very close to or partially on the pavement on the countrywards carriageway, with his head facing in the countrywards direction of the Falls Road.

This final position is marked by bloodstains that can be seen in the photographs and plans provided to the inquest.

[38] Some of the police officers attempted to give medical assistance to the deceased which included applying bandages to his wounds. However, as set out below, the nature of the Deceased's injuries were such that these efforts were to prove fruitless.

[39] It appears that two of the police officers who were attending to the Deceased came to the view that the wound to the front of the Deceased's chest at the point of his right nipple was an 'entry' wound – i.e. the place at which the bullet entered the body. They noted a corresponding wound to the left shoulder which they considered to be an 'exit' wound – i.e. the point at which the bullet exited the body.

[40] The shooting was reported to the Command Room. That was timed at about 5.18pm, which tends to time the shooting at very shortly before 5.18pm. The officers at the scene requested an ambulance. Additional uniformed officers were directed to go to the scene. This incident had blocked the traffic heading in both directions. Not only was there the ongoing incident with the Deceased laid on the ground and receiving medical attention, but the police officers and the Orion were blocking the carriageways both in a citywards and countrywards direction.

[41] I am satisfied from the evidence that there was a bus travelling in the countrywards carriageway of the Falls Road. That bus had stopped very close to the scene and many of the occupants of the bus had been able to view the Deceased lying on the ground fatally injured. A decision was made to allow the bus to pass. This was ill judged. The names and addresses of those on the bus should have been taken at the very first opportunity. While efforts were made subsequently to trace such passengers, and the bus driver, those failed to produce any tangible results. Call Sign 12 was then reversed back to permit Officer D to let the bus pass on the orders of Officer H who had just arrived at the scene. This again was most unsatisfactory especially as the position of Call Sign 12 was not marked on any sketch map at the time. There have subsequently been disputes and disagreements about the precise location of Call Sign 12 and where it stopped immediately prior to the shooting. Call Sign 12 remained at the scene for several minutes before it was driven away on the instructions of Officer H taking Officers D and F to Arizona Street.

[42] An ambulance attended at the scene and the Deceased was removed to hospital. He was seen by Dr Lau at the hospital at 5.30pm and life was declared extinct. In the light of the injuries described in more detail below, it is likely that the Deceased had died very soon after being shot and certainly prior to the formal confirmation of death by Dr Lau.

[43] Meanwhile Officer AB had directed HMSU officers to attend immediately at 2-4 Arizona Street in order to conduct searches. Sergeant A and Officers B, C and E

remained at the scene. Officers D and F left the scene in Call Sign 12 and drove to Arizona Street. I am satisfied that the order for the officers to leave the scene in Call Sign 12 to go to Arizona Street was done as a result of the genuine wish to search Arizona Street. I do not consider that there was any substance in the claim that their leaving the scene was part of some cover up. There is no substance in the suggestion made by a civilian that it was to spirit the shooter away. Several of the civilian witnesses believed that it was Officer F who had fired the fatal shots. However, the vehicle should not have been moved until SOCO had arrived and it had been properly mapped.

[44] It is significant that in the course of these searches at Arizona Street a Mark 15 Timer and Power Unit ("TPU") which can be used in under car 'booby trap' devices was found. When all the information is considered, there is strong evidence of terrorist activity taking place at Arizona Street that day and that the Orion and its occupants from the time of its hijacking were active participants in such activities.

[45] Officers B, C and D were driven back to Lisnasharragh Police Station. Sergeant A was also driven back to Lisnasharragh with Officers E and F, but separately from Officers B, C and D.

[46] At Lisnasharragh Sergeant A was examined by Dr Crowther. He did not report any anxiety to the doctor but was seen to be shaking and exhibiting signs of tension. These were considered a normal reaction to involvement in a traumatic incident. The evidence established that Sergeant A did suffer some sort of a nervous reaction to what happened on the Falls Road that night.

[47] Officer V was the head of the HMSU. At the relevant time he was at home and off duty. He received a telephone call notifying him of the incident. He considered that as the senior officer in command his presence was required regardless of whether he was on or off duty. He attended for the debrief of the officers involved which was conducted by Officer M. He said he did so to prevent mistakes which had occurred in earlier investigations of incidents where civilians had been shot by police officers.

[48] At about 6.45pm a debrief was held. Present at the debrief were Officers V, R, T, S, J, N, I, E, K, P, O, L, D, A, C, B, F, Q, M, J. Again I will examine the nature of the debrief, its purpose and importance, in some detail later on in this judgment.

[49] The medical evidence established that the Deceased had suffered the following injuries when he had been struck by three of the five bullets which were fired. It is probable that the bullet which killed him was the one which struck him on the left side of the back. His injuries comprised:

(a) An entrance gunshot wound to the back of the left shoulder centred 5cm below and 22cm to the left of the 7th cervical spine and 54 inches above the soles of the Deceased's feet. The bullet had passed forward

and to the right at an angle of about 45 degrees and slightly downwards. The bullet exited from the front of the left upper chest.

(b) An entrance gunshot wound on the left side of the back, centred 25cm below and 12.5cm to the left of the 7th cervical spine and 46 inches above the Deceased's feet. This bullet had passed forwards and to the right at an angle of about 45 degrees and upwards at an angle of about 15 degrees. In its course the bullet grazed the 9th left rib, lacerated the lower part of the left lung, the aorta (the main artery leaving the heart), the heart, the heart sac and the right lung before fracturing the right rib. The bullet made its exit on the right side of the front of the chest.

(c) An entrance gunshot wound on the back of the left arm, centred about 4cm above the point of the elbow and a corresponding exit wound on the front of the forearm centred 3cm below the elbow.

The injuries to the Deceased described at paragraph (b) would have ensured that death was rapid.

[50] The injuries are typical of those caused by 'low velocity' bullets. That is consistent with the weapon used by Sergeant A. I have no doubt that Sergeant A fired the bullets that killed the Deceased and that the casings found on the pavement on the citywards side of the Falls Road adjacent to the rear of the car known as Call Sign 8 were deposited close to where Sergeant A opened fire.

[51] The above is a brief outline of the events which led to the untimely death of the Deceased on the early evening of 25 November 1992. I will return to consider the evidence, both expert and factual, which has been adduced during this hearing and at other prior hearings, later in this judgment.

D. THE ONUS AND STANDARD OF PROOF AT INQUESTS OF THIS NATURE

[52] There are a number of issues of a legal and evidential nature that it is important to understand because they exert a very considerable influence on this inquest and on the search for the truth.

[53] In a criminal trial the onus of proof lies on the prosecution to prove its case. The standard of proof in a criminal trial is that the prosecution must prove its case beyond reasonable doubt. There is a presumption of innocence and the accused is not required to prove anything. The accused is entitled to be acquitted if there is a reasonable doubt. The representations made by the next of kin are to the effect that Sergeant A committed murder when he shot the Deceased in the back. In a criminal trial once the issue of self-defence is properly raised, as Sergeant A has attempted to do here, it is for the prosecution to establish that he did not act in self-defence. The

prosecution must establish this to the requisite criminal standard that is beyond reasonable doubt.

[54] In any civil trial, and there are I understand outstanding civil proceedings which have been set to one side until the coronial process has been exhausted, the onus will be on the plaintiff in those proceedings, that is the Deceased's personal representative, to prove his or her case. The standard of proof is the balance of probabilities. Accordingly, the plaintiff will have to prove that Sergeant A wrongfully caused the death of the Deceased. However, insofar as Sergeant A relies on the defence of self-defence, the onus will lie on Sergeant A to prove this on the balance of probabilities.

[55] However, this is not a criminal or civil trial. I am not permitted to express an opinion on criminal or civil liability although undoubtedly conclusions will be drawn and inferences made as a result of these findings which may affect individual participants. "An inquest is an inquisitorial fact-finding exercise and not a method of apportioning guilt" (see Bennett v UK [2011] 52 EHRR SE 7 at paragraph [50]).

[56] In R v HM Coroner v Humberside & Scunthorpe ex p Jamieson [1995] QB1 Bingham LJ said at paragraph [3]:

> "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."

[57] It is important to note that in any inquest any fact has to be proved to the civil standard, that is the balance of probabilities.

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

> "In the light of the importance of the protection afforded by Article 2, the court must subject deprivations of life to the most careful scrutiny, taking into consideration not only the actions of the State agents but also all the surrounding circumstances where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities …, strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation."

[59] The standard of proof required to provide a "satisfactory and convincing explanation", is the balance of probabilities.

[60] There has been extensive debate about the nature of the evidence necessary to satisfy the standard applicable, the balance of probabilities, in serious cases involving, as here, the intentional taking of human life. The matter is now well settled and I do not need to rehearse the debate. In Re CD's Application [2008] UKHL 33 Lord Carswell giving the leading judgment in the House of Lords said that the proper state of the law was effectively summarised by Richards LJ in R (N) v Mental Health Review Tribunal (Northern Region) [2005] EWCA Civ 1605 at paragraph [62], where he said:

> "Although there is a single civil *standard* of proof on the balance of probabilities, it is flexible in its *application*. In particular, the more serious the allegation or the more serious the consequences if the allegation is proved, the stronger must be the evidence before a court will find the allegation proved on the balance of probabilities. Thus the flexibility of the standard lies not in any adjustment to the degree of probability required for an allegation to be proved (such that a more serious allegation has to be proved to a higher degree of probability) but in the strength or quality of the evidence that will in practice be required for an allegation to be proved on the balance of probabilities."

[61] Lord Carswell said at paragraph [28]:

> "It is recognised by these statements that a possible source of confusion is the failure to bear in mind with sufficient clarity the fact that in some contexts a court or tribunal has to look at the facts more critically and more anxiously than in others before it can be satisfied to the requisite standard. The standard itself is, however, finite and unvarying. Situations which make such heightened examination necessary may be the inherent unlikelihood of the occurrence taking place …,
>
> the seriousness of the allegation to be proved or, in some cases, the consequences which could follow from acceptance of proof of the relevant fact. The seriousness of the allegation requires no elaboration: a tribunal of fact will look closely into the facts grounding an allegation of fraud before accepting that it has been established."

[62] Given the seriousness of the allegations made against Sergeant A, a heightened examination of the facts is obviously necessary. I must stress again that this inquest is an inquisitorial process and that the adversarial norms applicable to civil and criminal liability need not apply. The Coroner is making an inquiry into the circumstances of the death of the Deceased in accordance with his statutory obligations. Given what is in issue, namely the use of fatal force by a police officer, the State in general and the police in particular, have to provide a satisfactory and convincing explanation on the balance of probabilities to justify the death of the Deceased. This inquest shall examine all the evidence adduced both critically and anxiously given the seriousness of the issues involved.

E. LEGACY INQUESTS

[63] There are more than 50 inquests arising out of the Troubles which have not been heard for various reasons, but primarily due to lack of resources. They relate to deaths caused by the IRA in all its various guises, the UVF, the UDA and various other Loyalists groups, the RUC, and the Army. They involve some of the most notorious incidents of the Troubles.

[64] Some of the deaths go back to the early 1970s. In the present case the original inquest in 1995 was aborted. There was then a further inquest in 2012 which was heard before a jury but the verdict was set aside following a judicial review. There were obvious problems at the 2012 inquest with members of the jury. One member asked to be discharged because that member felt unable to comply with the Oath that had been sworn. It is unsurprising that legal advisers to the next of kin did not seek a jury for this new inquest. In this inquest like many others that wait to be heard there are two different and distinct narratives. On the one hand, a young man, unarmed, running away following a car chase is shot in the back three times by an armed police officer. On the other there is a terrorist escaping from a car which is suspected of carrying munitions and which has had to be stopped forcibly by the police, and who is suspected of being armed. He is shot in the back when he acts in a way that the police officer considers places him and his colleagues in mortal danger. In truth these are not two different stories. They are the same story narrated from a different perspective. The one chosen is likely to reflect the factfinder's political views. The two versions are irreconcilable. A jury in Northern Ireland is likely to display the divisions which disfigure this society. Morgan LCJ on appeal said in In the Matter of Three Applications by Hugh Jordan for Judicial Review [2014] NICA 76 at paragraph [83]:

> "The participation of the public in trials by jury constitutes a long recognised asset in the administration of justice."

However, he went on to say at paragraph [84]:

> "… it would be idle to ignore the problems both of jury intimidation and perverse verdicts in Northern Ireland."

[65] In reality it is unlikely that in future any of the legacy inquests will have juries sitting in judgment as factfinders. It is almost certain that all legacy inquests will have to be heard by a Coroner sitting on his or her own. Endless challenges to his or her conclusions can be anticipated, consequent appeals to the Court of Appeal and Supreme Court, and references to the European Court of Human Rights as both sides struggle to obtain an advantage. It is a prospect which should fill anyone with dread and despair.

[66] Each one of these inquests involves the death of someone who has been loved and cherished, whose loss after all this time will still be felt keenly by family and friends. Naturally, and quite properly, they will be searching for an explanation as to why the Deceased was taken away from them. But there will be others who will seek to make political capital out of their deaths. It will present an opportunity for the different sides to the conflict to point the finger of blame at each other. Each new and separate inquest will be like picking a scab on a wound that has started to heal, albeit slowly. The healing process in Northern Ireland has been slow at times, almost imperceptible. These legacy inquests may stop the healing process in its tracks, and even, perhaps put it back for years. However, it is difficult to see how there can be a shortcut in any fair and just attempt to uncover the truth without justice and the rule of law being compromised. All those involved in these deaths have fundamental rights which are protected by the ECHR and the Common Law. A Coroner at any inquest in searching for the truth must respect those rights and the rule of law. It is vital that any civilised society should deal with these deaths expeditiously rather than allow their undue delay to blight and poison the lives of those they have left behind. It is very much in the State's interests to deal with these inquests timeously. As a general rule the longer the delay, the staler the evidence is likely to be. This can rarely be to the advantage of the State which bears the burden of adducing evidence to provide a convincing explanation for the killing under Article 2.

[67] It is impossible not to feel the pain and grief of Mr and Mrs Jordan, the Deceased's parents, sitting in court day after day with a quiet dignity listening intently as the events of that fatal day on 25 November 1992 were replayed time and time again. Grief was etched on their faces and their tragic loss after all these years was still painfully raw. They had needlessly lost a beloved son, taken from them in his prime. They were there looking for an answer. I respect their deep and proper desire for a fair, open-minded and diligent consideration of all relevant matters and facts relating to the death of their son.

[68] Looking across at the witness box they saw opposite them a number of policemen give evidence. These were men who have borne witness to the difficulties

of operating in the terrible times which prevailed in Northern Ireland some 25 years ago. These men have had to live with the imminent threat to their lives as they did their best to contain a widespread terrorist threat across the whole of Northern Ireland. These too appeared to be decent men, placed in a world beyond most people's understanding, living their lives on a cliff edge, still at risk even today and too afraid for their own safety and that of their families to be called to give evidence by name. Many of them will bear deep mental scars, a product of their quest to protect the lives and properties of the ordinary, decent citizens of Northern Ireland.

F. PREVAILING CONDITIONS IN NORTHERN IRELAND 1992 AND 1993

[69] The background against which the events under consideration took place was a very different one from that which exists for the large part in Northern Ireland today. The murder of a prison officer in March 2016, however, is a stark reminder that there are still terrorists wedded to violence and prepared to murder instead of persuade in order to try and further their political and constitutional ambitions.

[70] The security forces in 1992 were stretched. On the one hand they had to deal with increasing loyalist violence manifested in sectarian gun attacks. On the other, the PIRA had evinced a determination to bomb the UK Government into submission.

[71] The police and the army were under enormous strain to maintain civil order and to prevent the needless loss of civilian life whether from exploding bombs or gun attacks. The worst features have perhaps been banished from the minds of most people and certainly memories have faded as they inevitably do with the passage of time. But these were truly terrible times. In October 1992 there were 43 terrorist incidents in Northern Ireland, in November 1992 there were 47 terrorist incidents and in December 1992 there were 33 terrorist incidents. The nature of these terrorist incidents, some of which I will discuss, are a matter of public record.

[72] PIRA's apparently limitless appetite for wanton violence can be easily demonstrated. It is a matter of public record. On 23 September 1992 PIRA detonated a 3,700lb bomb at the Northern Ireland Forensic Science Laboratory in South Belfast, destroying it, damaging 100s of houses in the immediate neighbourhood and injuring 20 people. On 21 October 1992 a 200lb bomb planted by PIRA exploded on Main Street, Bangor, causing widespread destruction. On 13 November 1992 PIRA detonated a van bomb in the centre of Coleraine laying it waste. On 1 December two bombs planted by PIRA exploded in Upper Queen Street, Belfast, injuring 27 people. Bombings and shootings continued unabated.

Morgan LCJ at paragraph [6] in the Court of Appeal case [2014] NICA 76 said in respect of AA's evidence as follows:

> "AA said he could not recall if there had been any assessment of the risk of stopping. He said that the overriding concern was whether a car bomb was going to the city centre. The priority was to ensure that the bomb did not go to the city centre because the IRA was hell bent on a bombing campaign. AA recalled that a few days after 25 November 1992 a bomb had exploded in Upper Queen Street, Belfast, in which 27 people were injured."

[73] PIRA's intention to destroy, demolish, maim and kill was not just confined to Northern Ireland. On 7 October 1992 5 civilians were injured when a bomb exploded in Piccadilly. Another exploded in Flitcroft Street. There were other bombings – one in October in Downing Street, the very heart of government. These attacks continued when two children were murdered and 56 injured in Warrington when a bomb planted by PIRA went off on 20 March 1993. The bombing of Bishopsgate in London resulted in one civilian being murdered, 30 being wounded and £350m worth of damage being caused.

[74] In the autumn of 1992 there was convincing intelligence that PIRA intended to carry out a bombing campaign in Belfast in the run up to Christmas to try and bring the city to its knees. There was reliable intelligence that Arizona Street was a base for the distribution of munitions and explosives. That was confirmed by the finding of a TPU, during the search of the premises the presence of "dickers" (PIRA observers) in the immediate area and traces of substances used to make homemade explosives in the Orion and in the "wheelie bin" at Arizona Street.

[75] It is against this background of savage violence, indiscriminate murder, widespread destruction of property and fear and threats to lives and property that the events which lie at the heart of this inquest were played out. That context is essential in any attempt to try and understand what happened on 25 November 1992 and what was in the mind of those police officers in Call Signs 8 and 12 as they went about the execution of their duties.

G. DELAY AND MEMORY

[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 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.

H. CREDIBILITY

[80] As a coroner sitting without a jury, it is part of my task to determine the truthfulness and accuracy of the testimony given by each witness. Human beings are poor lie detectors, despite what they may think. It is simply incorrect to assume, for example, that the nervous witness is an untruthful one on the basis that if you have nothing to hide you have nothing to fear. Very often a practised liar will give evidence with glib self-assurance. Truly "There is no art, to find the mind's construction in the face".

[81] Appearances can be and often are deceptive. Superficial assessments on the basis of appearance and manner can lead to grave errors. As Lord Bingham points out in his book, The Business of Judging, the "current tendency is (I think) on the whole to distrust the demeanour of a witness as a reliable pointer to his dishonesty." He quotes the Honourable Sir Richard Eggleston QC who wrote in 1978:

> "Many judges think they can tell from the demeanour of a witness when he is lying, but in the course of my practice at the Bar there were several occasions on which witnesses, whom I firmly believed to be honest and to be telling the truth, displayed evident signs of embarrassment and discomfort in the witness box, sufficient to make them appear to be lying. I am therefore very sceptical of such claims. A more complicated case in which demeanour was deceptive was that of a man whom I knew well, who was employed as a bookkeeper on a sheep station. When called upon to tell a social lie, he was covered with blushes and showed every sign of acute embarrassment. He always spent much more than his salary and was believed to have wealthy parents, but so transparent did he appear to be it did not occur to anyone to question his honesty until a query came from head office about the accounts, when he asked for the afternoon off, and was found dead some distance away. He had been systematically defrauding his employers for years, and almost

> everything he had told to his associates about himself was fiction."

[82] No finder of facts has a window into a witness's soul. In Onassis & Calogeropoulos v Vergottis [1968] 2 Lloyd's Rep 403, Lord Pearce said at page 431:

> "*Credibility* involves wider problems than mere *demeanour* which is mostly concerned with whether the witness appears to be telling the truth as he now believes it to be. Credibility covers the following problems. First, is the witness a truthful or untruthful person? Secondly, is he, though a truthful person telling something less than truthful on this issue, or though an untruthful person, telling the truth on this issue? Thirdly, though he is a truthful person telling the truth as he sees it, did he register the intentions of the conversation correctly and, if so, has his memory correctly retained them? Also, has his recollection been subsequently altered by unconscious bias or wishful thinking or by over much discussion of it with others? Witnesses, especially those who are emotional, who think that they are morally in the right, tend very easily and unconsciously to conjure up a legal right that did not exist. It is a truism, often used in accident cases that with every day that passes the memory becomes fainter and the imagination becomes more active. For that reason a witness, however honest, rarely persuades a Judge that his present factual recollection is preferable to that which was taken down in writing immediately after the accident occurred. Therefore, contemporary documents are always of the utmost importance. And lastly, although the honest witness believes he heard or saw this or that, is it so improbable that it is on the balance more likely that he was mistaken? On this point it is essential that the balance of probability is put correctly into the scales in weighing the credibility of a witness. And motive is one aspect of probability. All these problems compendiously are entailed when a judge assesses the credibility of a witness; they are all part of one judicial process. And in the process contemporary documents and admitted or incontrovertible facts and probabilities must play their proper part."

[83] Lord Bingham in The Business of Judging (2nd Edition) at page 6 says:

"Every judge is familiar with cases in which the conflict between the accounts of different witnesses is so gross as to be inexplicable save on the basis that one or some of the witnesses are deliberately giving evidence which they know to be untrue .. more often dishonest evidence is likely to be prompted by the hope of gain, the desire to avert blame or criticism, or misplaced loyalty to one or other of the parties. The main tests needed to determine whether a witness is lying or not are, I think, the following, although their relative importance will vary widely from case to case:

(1) the consistency of the witness's evidence with what is agreed, or clearly shown by other evidence, to have occurred;

(2) the internal consistency of the witness's evidence;

(3) consistency with what the witness has said or deposed on other occasions;

(4) the credit of the witness in relation to matters not germane to the litigation;

(5) the demeanour of the witness.

The first of these tests may in general be regarded as giving a useful pointer to where the truth lies. If a witness's evidence clearly conflicts with what is clearly shown to have occurred, or is internally self-contradictory, or conflicts with what the witness has previously said, it may usually be regarded as suspect. It may only be unreliable and not dishonest, but the nature of the case may effectively rule out that possibility.

The fourth test is perhaps more arguable."

[84] Lord Bingham then goes on to say:

". There are, no doubt, witnesses who follow the guidance of good soldier Sveyk that *The main thing is always to say in court what isn't true*, as a matter of

> principle, but more often dishonest evidence is likely to be prompted by the hope of gain, the desire to avert blame or criticism, or misplaced loyalty to one or other of the parties."

[85] Lord Bingham also discusses the theory that if a witness is prepared to lie on one issue, then his evidence cannot be relied upon at all. As the Latin maxin puts it:

> 'Falsus in uno, falsus in omnibus'."

It was his opinion that many witnesses whose evidence can be relied upon do tell lies on all sorts of issues not central to the case and for all sorts of reasons. He said:

> "Equally, I strongly suspect that many honest witnesses, who would do their very best to ensure that the substance of their evidence was reliable and accurate, would nonetheless be willing to prevaricate, or if necessary lie, when asked why they lost their previous job or how their first marriage came to break up. Cross-examination as to credit is often, no doubt, a valuable and revealing exercise, but the fruits of even a successful cross-examination need to be appraised with some care."

That is certainly my experience both at the Bar and on the Bench. Witnesses do prevaricate, they do tell untruths on some issues that may be peripheral to the main event, but that does not always render worthless the whole of their testimony. A much more nuanced approach in assessing their testimonies is required from any judge of fact.

[86] Lord Devlin looked at what effect a lie has on a witness's testimony when that does not relate to the central issue in Broadhurst v The Queen [1964] AC 441 at 457. He said:

> "It is very important that a jury should be carefully directed upon the effect of a conclusion, if they reach it, that the accused is lying. There is a natural tendency for a jury to think that if an accused is lying, it must be because he is guilty, and accordingly to convict him without more ado. It is the duty of the judge to make it clear to them that this is not so. Save in one respect, a case in which the accused gives untruthful evidence is no different from one in which he gives no evidence at all. In either case the burden remains on the prosecution to prove the guilt of the accused. But if upon the proven facts two inferences may be drawn about the accused's conduct or state of

> mind, his untruthfulness is a factor which the jury can properly take into account as strengthening the inference of guilt. What strength it adds depends, of course, on all the circumstances and especially on whether there are reasons other than guilt that might account for untruthfulness."

[87] However, there can be real advantages for a Coroner in observing the demeanour and manner of witnesses when they gave their evidence. Lord Loreburn said in Kinloch v Young [1911] SC (HL) 1 at page 4:

> "Now, Your Lordships have very frequently drawn attention to the exceptional value of the opinion of the judge at first instance, where the decision rests upon oral evidence. It is absolutely necessary no doubt not to admit finality for any decision of a judge at first instance, and it is impossible to define or even to outline the circumstances in which his opinion on such matters ought to be overruled, but there is such infinite variety of circumstances for consideration which must or may arise, and it may be that there has been misapprehension, or that there has been miscarriage at the trial. But this House and other Courts of appeal have always to remember that the judge of first instance has had the opportunity of watching the demeanour of the witnesses – that he observes as we cannot observe, the drift and conduct of the case; and also that he has impressed upon him by hearing every word the scope and nature of the evidence in a way that is denied to any Court of appeal. Even the most minute study by a Court of appeal fails to produce the same vivid appreciation of what the witnesses say or what they omit to say."

Lord Pearse said much the same thing in Onassis v Vergottis (see above).

[88] I do consider as a judge of fact I have a decided advantage from observing and hearing a witness give evidence although the benefits should not be exaggerated. While, of course, the way in which a witness answers a question or questions can never be an infallible guide to the truth, it does provide certain insights denied to the reader of a transcript. This is especially noteworthy in comparing the evidence given by those witnesses who gave sworn testimony before me and reading the transcripts of their evidence at the 1995 inquest and again at the 2012 inquest. The facts of any case are rarely black and white. The way in which a witness hesitates, the tone of his voice, the inflexion, the leakage, that is the emotion slipping out somewhere, whether by the way in which the witness covers his mouth,

or some other involuntary sign derived from his body language which, when taken together with the other factors which I have referred to, assist the court in determining whether it is being given a truthful version as the witness remembers it. A Coroner must always be alert to the risks, especially in a case of such a vintage as this, of relying too heavily on the convincing demeanour and manner of delivery of a witness. That is why it is necessary to return to the hard facts as they can be ascertained and test any testimony against what has been proved, what is possible and what is impossible.

I. ANONYMITY AND SCREENING APPLICATIONS

[89] I received applications from 13 police witnesses who gave evidence at the inquest. The applicants were members of the HMSU and members of the TCG who were on duty at the time of the fatal shooting. The applicants had been allocated cipher numbers at the time of the taking of their statements: see the synopsis of the main police witnesses at paragraph [12] above.

[90] The applications requested the following measures: (a) screening from view of the family of the Deceased, the public and representatives of the media; (b) anonymity; (c) the redaction of the officers' names from the statements and all other documents and the use of ciphers; (d) redaction and the use of ciphers as appropriate on any other documents presented to the inquest; and (e) arrangements whereby the officers could enter and leave the inquest venue in circumstances that would afford protection from public view and from harassment and would afford reasonable respect for their dignity and right to privacy.

[91] The documentation presented in support of these applications was as follows:

i. A generic application, with five annexes: (a) details of Dissident Republican attacks in 2015 and 2016; (b) the Twenty-Fifth Report of the Independent Monitoring Commission (2010); (c) a report from the Sunday Times of 6th February 2011; (d) a speech by the Secretary of State for Northern Ireland on 26th February 2015 concerning the Northern Ireland security situation; (e) the Secretary of State's oral statement on 20th October 2015 on the assessment of paramilitary groups in Northern Ireland (along with the assessment report dated 19th October 2015).

ii. A statement in support of the applications by a Detective Chief Superintendent attached to Legacy and Justice Department, dated 9th February 2016.

iii. An application on behalf of each officer, comprising the generic application adapted for the purposes of the individual applicant, a personal statement, a threat assessment obtained in January 2016 and a PSNI Security Report of January 2016.

iv. Medical reports were also submitted in support of the applications of Officers AA, AB, B and Q.

[92] On 15 February 2016, a week before the commencement of the inquest, I issued provisional rulings granting anonymity and screening (and the other measures sought) to the thirteen applicants. I acknowledged in the rulings that the application procedure had been dealt with promptly to ensure that applications would be duly resolved in advance of the hearing. I also expressed gratitude to witnesses, representatives of properly interested persons and those involved in preparing documentation in support of applications for adhering to the revised schedule.

[93] I am further indebted to the representatives of properly interested persons for the speed of their response to the provisional rulings. I received written submissions on behalf of the next of kin on 17 February 2016 and on behalf of the Chief Constable on 18 February 2016. Oral submissions on the matter were heard on 18 February 2016. On 19 February 2016, I issued my final rulings. I upheld the provisional rulings (with one modification as outlined below) and indicated that I would provide written reasons following the conclusion of the inquest.

[94] I set out the legal background to this matter in my provisional rulings and, for completeness, I summarise the background for the purpose of my final rulings. At the earlier inquest into the death of the Deceased held in September - October 2012, all of the applicants (with the exception of Officer H, who did not give evidence at the 2012 inquest) gave their evidence anonymously. (As I indicated at paragraph [1] above, the verdict on this inquest was quashed by the High Court: *Jordan's Applications* [2014] NIQB 11 (Stephens J). The Court of Appeal upheld that decision and directed that the matter be remitted to a different Coroner: *Jordan's Applications* [2014] NICA 76).

[95] The decisions on anonymity and screening made by the Coroner prior to the inquest in 2012 had been subject to a judicial review challenge. The challenge was taken both by officers to whom the protective measures had been refused by the Coroner and by the next of kin of the Deceased in respect of the decisions to grant anonymity and screening: see *Officer C, D, H and R's Application; Officer A's Application; Jordan's Application* [2012] NIQB 62 (Deeny J).

[96] The decision of the High Court - Deeny J had granted anonymity and screening to a number of officers who had been refused those measures and referred the applications of two other officers back to the Coroner - was itself the subject of an appeal: *In the matter of an Application by C, D, H and R and others for Leave to Apply for Judicial Review* [2012] NICA 47. The Court of Appeal's decision clarified the law governing the circumstances in which a "real and immediate risk" arose and the consequent engagement of Article 2 ECHR (with reference to the leading opinion of the House of Lords *In re Officer L and others* [2007] UKHL 36). That decision was

made in the context of these inquest proceedings and concerned several of the officers who applied for anonymity and screening at this hearing.

[97] In addressing what constitutes a real and immediate risk, Girvan LJ observed as follows (emphasis added):

> "[71] Those authorities, albeit in a different context, together with Lord Dyson's contrast between a fanciful risk and a significant risk lend support to the view that *a real and immediate risk points to a risk which is neither fanciful nor trivial and which is present (or in a case such as the present will be present if a particular course of action is or is not taken)* … In the context of Northern Ireland which has been subjected to decades of homicidal attacks on individuals by organised terrorists the threat to life has been real, though for the bulk of the population it is not a threat directed at them individually so that for most the risk is not present and continuing in the sense of immediate to them. For some, such as members of the police force, the level of threat has been and continues to be at a much higher level and it is much more immediate. It cannot be considered as anything close to fanciful and it is significant. The requirement to give evidence imposed on officers involved in this inquest will, according to the evidence, increase a present threat possibly significantly depending on the nature of the evidence and other unknown contingencies arising out of the inquest. The risk accordingly must qualify as real, continuous and present."

[98] Girvan LJ went on to consider specifically the approach adopted by the Coroner to the applications in which the Coroner had refused anonymity and screening and added:

> "[46] In the context of the officers refused anonymity in [and] screening the coroner proceeded on the basis that the risk was not at a sufficient level to engage the need for positive action under article 2. However, in each case it was recognised that there was a real possibility of the officer's personal security being undermined. This would depend on the nature of the evidence, how this would be examined in the course of the inquest and whether or not it was considered controversial. Those are all matters which would emerge over a period of time. The officers were already within the level of moderate

threat. If they gave evidence without the benefit of anonymity / screening there was a possibility of a rise within the moderate band or beyond. Against that fluid and unpredictable background and in the context of an on-going terrorist campaign in which police officers very much remain as higher risk targets compared to the general population, the evidence points, in the words of *Soering*, to substantial grounds for believing that they faced real risks of a murderous attack. The risk could not be dismissed as fanciful, trivial or the product of a fevered imagination. What the evidence before the coroner showed is that the relevant officers were at real risk of terrorist attack. The state authorities know that the evidence, if given openly, could expose the witnesses to an increased risk, that that increase in risk could be significant and that the incalculable extent of that increase depended on what the witness might say in the course of the evidence, how controversial his evidence might be perceived to be and how he might be questioned in the course of the investigation. Arrangements for anonymity and screening will reduce and may well remove the risk of the increased chances of a terrorist attack. These factors point to the conclusion that the coroner was in error in concluding that the need for action under article 2 did not arise. Since the need for operational action under article 2 was in play the coroner in acting as a public authority is required to address the issue of what proportionate response is required in the circumstances."

[99] In arriving at the provisional rulings, I was also mindful of the conclusions of Stephens J in *Jordan's Applications* [2014] NIQB 11. In those proceedings, the next of kin challenged post-Inquest the grant of anonymity and screening to the officers. Stephens J concluded:

> "[304] A pre-requisite to a judicial review challenge is a decision. The Coroner was not invited to make a decision after the judgment was delivered by the Court of Appeal. Accordingly on that basis I dismiss the judicial review application in relation to those Officers to whom the Coroner had not initially granted anonymity and screening. Alternatively in the exercise of discretion I decline to grant any relief to the applicant in relation to those

Officers.

[305] If I am incorrect in that conclusion I consider that the outcome of the balancing exercise, given the analysis of Deeny J and all the submissions which have been made to the Coroner was inevitable. If that was not so then an application would have been made to the Coroner.

[306] I dismiss that part of the judicial review challenge that relates to those officers to whom the Coroner had not initially granted anonymity and screening.

[307] The impugned decision in relation to officers who had been granted anonymity and screening is the decision of the Coroner dated 29 June 2012. The reasons given by Deeny J for refusing judicial review of the decision to screen the witnesses (see paragraphs 83-108) were prospective in advance of the inquest. I consider that all of those factors were in play. I note that the Security Services linked the risk to life with both a witness being named and appearing unscreened. I do not consider that the effectiveness of the inquest was undermined by the decisions to grant anonymity and to screen the witnesses.

[308] I dismiss that part of the judicial review challenge that relates to those Officers to whom the Coroner had initially granted anonymity and screening."

[100] In arriving at both the provisional and final rulings, I confirm that I have had full regard to the principles as enunciated by the House of Lords in *Officer L* and as subsequently clarified, in the context of this case, by the Court of Appeal in *C, D, H and R and others*.

[101] The individual circumstances of the applicants were detailed in the personal statements submitted in support of the applications, which were disclosed to the next of kin. I do not propose to rehearse those personal circumstances in this judgment. It suffices to say that I have considered fully the contents of the personal statements and accompanying documentation for the purpose of my rulings.

[102] The threats to individual applicants were assessed as follows:

Officer AA	LOW
Officer AB	LOW
Officer A	LOW
Officer B	LOW
Officer C	MODERATE
Officer D	LOW
Officer E	LOW
Officer F	MODERATE
Officer H	LOW
Officer M	MODERATE
Officer Q	LOW
Officer R	MODERATE
Officer V	LOW

[103] The threat assessments defined LOW as "an attack is unlikely". The assessments went on to say that an appearance at the inquest without the benefit of screening/ anonymity would serve to increase the profile of the applicant and potentially bring him to the attention of Dissident Republican groups. It was assessed that, in such a scenario, the threat was likely to rise into the MODERATE band and possibly beyond depending on the nature of the evidence. MODERATE was defined as "an attack is possible, but not likely". Where the initial assessment was MODERATE (C, F, M and R), it was said that in the event of an appearance at the inquest without anonymity and screening, the threat was likely to rise within and possibly beyond the MODERATE threat band, depending on the nature of the evidence. This is particularly so in the case of Sergeant A who fired the fatal shots which struck the Deceased.

[104] The PSNI Security Branch's report in respect of each application stated that there was a possibility that the personal security of each applicant may be undermined should that applicant be called to give evidence; that this may be influenced by the nature of the evidence, how it would be examined and whether or not it was considered "controversial" in nature.

[105] For the purpose of the provisional rulings, I first addressed the question of whether the evidence before me established a real risk to life that was neither fanciful nor trivial and that was present, or would be present, if a particular course of action was or was not taken: see the observations of Girvan LJ at paragraph [43] of *C, D, H and R and others* (cited above). The assessments in respect of each applicant described the level of threat as LOW or MODERATE, but with the potential to rise as detailed above. Further, there was said to be a possibility that an applicant's personal security may be undermined if he were called to give evidence. All of the applicants were in fact scheduled to give evidence (and ultimately did give evidence). I was satisfied, on the basis of the evidence before me, that the risk to life

could not be regarded as "fanciful or trivial" or "not present" (per Girvan LJ). I therefore ruled that Article 2 was engaged in each application.

[106] I then addressed the question of what protective measures, if any, should be adopted as a proportionate response. In *Officer L*, Lord Carswell took the view that, if a tribunal found that the increased risk would amount to a real and immediate risk to life, then it "would ordinarily have little difficulty in determining that it would be reasonable in all the circumstances to give the witnesses a degree of anonymity" (see [2007] UKHL 36 at [29]). Given my conclusion on the nature of the risk and the engagement of Article 2, I was satisfied that it would be appropriate to grant at the very least the minimum measure of protection – namely, anonymity – to each applicant.

[107] In the provisional rulings, I noted that it did not necessarily follow from the grant of anonymity that the witnesses should also be screened. I therefore went on to consider whether the *additional* protection of screening was a necessary and proportionate response to the risk. I noted (as per Stephens J) that the assessments linked the risk to life with both a witness being named and giving evidence unscreened. Further (as per Girvan LJ, emphasis added), "arrangements for anonymity *and screening* will reduce and may well remove the risk of the increased chances of a terrorist attack".

[108] In determining whether the grant of screening was necessary and proportionate, I also considered carefully the personal statements submitted on behalf of each applicant, which gave details of the applicant's past role within the police and the applicant's personal circumstances. I considered, in each case, whether the risk could be addressed solely by the grant of anonymity without screening. In each case, my assessment was that the grant of anonymity could potentially be compromised if the applicant were required to give evidence in open court without the benefit of screening. I therefore determined that the grant of screening was necessary and proportionate.

[109] The next of kin accepted that the application of the test suggested by the Court of Appeal – that the risk could not be dismissed as fanciful or trivial – justified the conclusion that the Article 2 threshold had been met in relation to all applicants. They submitted, however, that it did not follow that anonymity should follow as a necessary and proportionate response or that anonymity is the minimum measure of protection. They submitted that I should have received evidence of individualised security measures that might be put in place to address the particular risk in each case and then decide on the protective measures required to address that risk.

[110] It was further submitted that the issues of anonymity and screening are conflated in the threat assessments. The consequence of this, the next of kin submitted, was that the judicial exercise of determining whether screening was necessary in addition to anonymity had not been properly performed. There had also been a failure, in the next of kin's contention, to identify the reasons why in each

case screening was necessary and proportionate over and above the other protective measures afforded to the applicants. It was also argued that there had been no evaluation of the individual visual appearance of each applicant and of the extent to which officers had given evidence without anonymity and screening in other cases. The next of kin also suggested that there had been no consideration of the global impact on the Article 2 compliance of the inquest; that acceding to all of the applications resulted in a process that was not transparent.

[111] The submission also highlighted the importance of open justice (with reference to Article 10 ECHR) and the need for any departure from that principle to be justified, as well as the Article 2 imperative of an effective investigation and the participatory rights of the next of kin. Particular objection was taken to the decision to screen the witnesses from the next of kin. The submission went on to note particular factors in respect of each of the applicants that might bear upon whether the grant of anonymity and/or screening was justified.

[112] The submission in response on behalf of the Chief Constable placed emphasis on the breadth of the discretion afforded to me as Coroner in applying the appropriate legal test to individual applications and on the fact that the decisions would remain subject to review throughout the inquest. It was submitted that, the Article 2 threshold having been met, it was incumbent on me as Coroner to ensure that witnesses would not be required to give evidence in a manner that would increase an objectively verified risk to their lives.

[113] In response to the next of kin's submission that I should receive evidence of security measures that could be put in place before deciding on which protective measures were necessary, it was submitted, firstly, that my duty was simply to assess whether the measures sought were reasonable and proportionate and, secondly, that I had in fact given appropriate consideration to that question. As regards the need for screening to be afforded separate consideration, it was submitted that, even if the threat assessments had conflated the issues of anonymity and screening (which was not accepted), I had correctly separated out the issues. The provisional rulings were not therefore undermined by any perceived inadequacy in the threat assessments.

[114] The submission proceeded to distinguish other cases cited by the next of kin in support of the proposition that the officers should not be screened from Mr and Mrs Jordan and, in response to the argument based on the principle of open justice, to highlight the Article 2 risks in play in the context of these applications. Finally, the submission responded to the factors cited by the next of kin in respect of the individual applications and drew attention to individual factors that, it was contended, lent support to the grant of anonymity and screening.

[115] The above submissions were further developed at an oral hearing on 18 February 2016. The next of kin placed particular emphasis on the alleged failure of the assessments to distinguish between the need for anonymity and the need for

screening, on the need for protective measures to be clearly justified and on the lack of justification for screening from Mr and Mrs Jordan. It was accepted on behalf of the Chief Constable that there was no suggestion that the next of kin themselves posed a specific risk, but the argument for screening from them was maintained on the basis of the possibility of "unguarded disclosure" to third parties of information that might lead to identification of the applicants.

[116] Having considered the detailed written and oral submissions, I decided that the provisional rulings should stand, save in one respect. I decided that it was not necessary for the applicants to be screened from Mr and Mrs Jordan when giving their evidence. The legal representatives of the next of kin undertook to explain to Mr and Mrs Jordan the need for the anonymity of the witnesses to be respected notwithstanding that they would have the opportunity of seeing the witnesses give evidence. I emphasised that my decision was confined to the particular facts and circumstances of this inquest alone. I also indicated that I would review the matter as the inquest proceeded and, in the event of a change of circumstances, my rulings would be revisited accordingly.

[117] Mr and Mrs Jordan were invited to sit in the jury box in the course of the evidence given by these witnesses. They were thus enabled to see all of the applicants giving their evidence.

[118] I confirm that I did in fact keep the matter under review in the course of the hearing. I also confirm that my rulings granting anonymity and screening to the officers should remain in place. I am satisfied that those measures represented a necessary and proportionate response to the risk, the Article 2 threshold having been met in the case of each applicant.

[119] Each witness was asked questions at the outset of their evidence by counsel to the Coroner. At the close of those questions, counsel to the Coroner asked the witness to indicate to the Court what concerns he had about giving evidence without the benefit of anonymity and screening. This afforded the Court a first-hand opportunity to record and assess the subjective concerns of the applicants in conjunction with the material comprised in the written applications. I noted that no challenges were made to the responses they each offered regarding the concerns they harboured about their own security and the security of their families. I acknowledge that the Article 2 test does not *depend on* the existence of subjective fear but on the reality of the existence of the risk and that, in the context of Article 2, subjective fear is no more than evidence that may point towards the existence of a real and immediate risk: see *Officer L* [2007] UKHL 36 per Lord Carswell at paragraph 20. The testimony of each officer about the risks which they believed they were running in giving evidence appeared measured and reasonable. It served to underline the real risk that each officer was prepared to take by giving sworn testimony during the inquest.

[120] In the present case, I found on the basis of the evidence before me that Article 2 was in fact engaged, that a risk to each applicant's life would be created or materially increased if the applicant were to give evidence without the benefit of anonymity. That risk has been objectively verified. It is accepted by all interested persons that the Article 2 threshold is met in respect of each applicant.

[121] Had Article 2 not been in play, those subjective concerns would require to be considered in the balancing exercise at common law to determine whether it would be unjust or unfair for the applicant to give evidence without anonymity and/or screening: see *Officer L*, in particular at paragraphs 22 and 29. It is not necessary for me to make a formal determination on the basis of the balancing exercise at common law. I can confirm, however, that there was nothing to suggest that the subjective concerns of the applicants about giving their evidence without the benefit of anonymity and screening were not genuinely held. I note also that the medical evidence furnished in support of the applications of AA, AB, B and Q would have weighed in favour of the grant of their applications at common law.

[122] Given the engagement of Article 2, it was incumbent on me to determine, in the case of each and every applicant, what protective measures would afford a necessary and proportionate response to the risk. It must be emphasised that, in the context of Article 2, the risk is *to life*. The relevant public authority – in this case the Coroner – is charged with the responsibility of taking the appropriate "operational action" to address the risk.

[123] I am not persuaded by the submission that, in the circumstances of this case, the necessary protection could be achieved otherwise than through the grant of anonymity. The next of kin in their written submission suggested that Lord Carswell had recognised in *Officer L* (at paragraph 29) that there were "degrees of anonymity". Lord Carswell in fact observed that, where a real and immediate risk had been identified (as in the present case), then the Court would normally have little difficulty in determining that it would be reasonable to grant "a degree of anonymity".

[124] It seems to me that Lord Carswell was envisaging anonymity as the baseline protection, it then being incumbent on the Court to consider whether steps beyond anonymity *per se* would be necessary to address the risk. If I am wrong about that, I draw attention to the particular terms of the assessment: namely, that an appearance at the inquest may increase the profile of the applicants and potentially bring them to the attention of Dissident Republican groups, thereby increasing the threat to them. It seems to me that this justifies a precautionary approach being taken to this matter, whereby – at the very least - the identity of the applicants should not be made public.

[125] As regards the necessity for screening, it is correct to say that the assessments do not engage in a separate analysis of the threat to an applicant that would arise if anonymity were granted but without the benefit of screening. The assessments refer

to the increased threat that would be occasioned to an applicant "without the benefit of screening/anonymity".

[126] I do not accept that nature of the threat assessments has undermined the judicial exercise that I have been required to perform. I have considered the threat assessments in conjunction with the other evidence and in particular the individual circumstances of each applicant. I have considered the various factors that each applicant has advanced in support of the application and I have considered the various factors advanced on behalf of the next of kin in opposition to the applications. Those factors include: (a) claims to distinctive appearance (which I have been in a position to assess), (b) the present working status of the applicant, (c) where the applicant resides, (d) whether the applicant has given evidence before in terrorist cases without the benefit of anonymity and screening, (e) the nature of the role played by the applicant in the incident and (f) other potentially relevant aspects of an applicant's role in policing, such as involvement in intelligence-led operations against terrorists.

[127] I do not propose to set out the individual factors that apply in the case of each individual applicant. I can assure the applicants and the next of kin that I have given each of them due and proper consideration. In each case, I have considered whether the grant of anonymity standing alone (or in conjunction with the protective measures other than screening) would be sufficient to protect the individual applicant against the threat. In each case, I have been satisfied that the additional protective measure of screening is necessary to ensure the maintenance of anonymity and thus to protect against the risk to life.

[128] I wish to emphasise again that the risk identified is a risk to life. I am charged with the responsibility of adopting measures that are necessary and proportionate to protect against that risk. I take the view that a failure to grant screening to the applicants in this case would give rise to a risk of identification, whether through recognition or through the conduct of research on the basis of their appearance having become public. Failure on my part to afford the additional precaution of screening in the circumstances of these applications would thus lead to a real risk of compromise of the applicants' Article 2 rights. I am satisfied that my rulings on the matter are entirely in keeping with the principles as enunciated by the House of Lords in *Officer L* and by the Court of Appeal in *C and others*, the relevant passages of which I have cited above.

[129] I am fully cognisant of the importance of the principle of open justice and a firm believer in it. I am also aware of the requirements of Article 10 ECHR, as highlighted on behalf of the next of kin. I agree that any departure from the principle of open justice must be clearly justified. In this case, as I have explained, the Article 2 rights of the applicants require the adoption of certain measures to protect against an objectively verified risk to life. I note in passing that, while the measures adopted prevent the identities of the applicants being made public, these are nonetheless public proceedings. There are no restrictions on public attendance at

the inquest, no restrictions on press reporting of the proceedings and no restrictions (other than the normal constraints of relevance and judicial control where necessary) on the examination of the witnesses by representatives of interested parties.

[130] The written submission of the next of kin expressed concern that the grant of anonymity and screening to the applicants would impinge on the Article 2 compliance of the inquest proceedings. Reliance was placed on the following passage from Anguelova v Bulgaria [2002] 38 EHRR 659 (at paragraph 140):

> "There must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory, maintain public confidence in the authorities' adherence to the rule of law and prevent any appearance of collusion in or tolerance of unlawful acts. The degree of public scrutiny required may well vary from case to case. In all cases, however, the next of kin of the victim must be involved in the procedure to the extent necessary to safeguard his or her legitimate interests …"

[131] Having presided over the evidence at the inquest, I am satisfied that the grant of anonymity and screening to the applicants has not in fact undermined the capacity for public scrutiny of the investigation. I am also satisfied that the next of kin have been involved in the procedure to the extent necessary to safeguard their legitimate interests. The witnesses have not been screened from Mr and Mrs Jordan or from their legal representatives. Their representatives have not been impeded by the grant of anonymity and screening from conducting a searching examination of the TCG and HMSU witnesses. I have also exercised my discretion under Rule 20 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 to permit interested persons to make written and oral closing submissions as to the facts. The preparation of submissions has been facilitated by the provision to interested persons of a daily transcript of the evidence at the inquest. The participatory rights of the next of kin have been fully respected.

[132] One related issue that was raised in the submission was that out of court investigations about named witnesses might yield information that could be deployed in the inquest. It should be noted, however, that prior to this inquest all of the applicants in this case were asked whether they were involved in any incident when they or an officer with them fired a weapon, whether or not the incident resulted in a person being killed or injured. Details of their responses were provided to the next of kin.

[133] Further, material relating to the involvement of Officers A, V and M in the events that were the subject of investigation by the Stalker Sampson teams had been disclosed to the next of kin. Material relating to the involvement of Officer AA and

Officer M in the police operation that culminated in the death of Neil McConville in 1993 and the Police Ombudsman investigation into that matter had been disclosed to the next of kin. The next of kin have been able to deploy that material in the course of the hearing. I am not persuaded that the grant of anonymity and screening to these witnesses has resulted in the next of kin being disadvantaged through any lack of access to material bearing upon the credibility of the witnesses or other material that might be capable of being deployed at the hearing.

[134] Finally, I observe that as the Coroner and finder of fact in these proceedings, I have not been disadvantaged by the grant of anonymity to the applicants. In the course of the hearing, I requested and was provided with photographs of the ciphered witnesses. This has ensured that, when reviewing the evidence, I have had no difficulty in recollecting the evidence as given by each officer in the witness box. I am satisfied that the effectiveness of my inquiry as Coroner has not been undermined in any respect by the grant of anonymity (or screening) to the witnesses.

[135] On the basis of the above, I confirm the grant of anonymity and screening and the related protective measures to the applicants. Nothing has occurred in the course of the hearing that would cause me to alter the rulings in respect of those witnesses. Having presided over the inquest, I am also satisfied that the determination that the witnesses should not be screened from Mr and Mrs Jordan was entirely correct. It is my sincere hope that they have been assisted by that determination.

[136] Having regard to all of the factors that have been drawn to my attention in this matter, I am satisfied that the proper balance has been struck between, on the one hand, the protection of the Article 2 rights of the witnesses and, on the other, the participatory rights of the next of kin and the principle of open justice.

J. HMSU AND TASKING AND CO-ORDINATING GROUP

[137] The role of the police and Army in Northern Ireland has been to keep the peace in times of great civil unrest and to try and prevent the country from descending into anarchy. This was and remains an enormously difficult task and it should in no way be under-estimated. In the early 1990s the HMSU comprised three sections which provided uniformed support to Army and police services. They were an elite squad of some 60 officers, highly trained and operating under the most exacting of circumstances. Day and daily they were engaged in operations in which they placed their lives on the line in order to try and maintain some sort of semblance of public order in Northern Ireland. For the most part the police involved in the attempted arrest and killing of the Deceased were members of HMSU. Sergeant A who was in command on the ground of Call Sign 8 and Call Sign 12 considered himself to be probably the most experienced anti-terrorist police officer in Western Europe. There is no doubt that operating as they did, under the most severe pressure imaginable, the members of HMSU will have developed a close bond. Each one will have appreciated his life could depend on the split second

reaction of a colleague. It is also true that in the past members of HMSU have equivocated and lied for a variety of reasons about the circumstances leading up to the killing of civilians. HMSU officers have said that this was to protect sources whether human or electronic. The next of kin say that it was to cover their tracks. There can also be no doubt that this investigation has not been given the complete picture of what happened, which is also deeply disappointing. However, I intend to say something about this when I come to the issue of disclosure and when I consider the Stalker/Sampson incidents and the report of the Police Ombudsman concerning the death of Neil McConville.

[138] The control structure at the HMSU at the time of the incident under consideration can be briefly set out as follows. At the apex was the Chief Superintendent, who was the regional head of Special Branch in Belfast. Below him was Detective Superintendent AB who was in overall control of the TCG on 25 November 1992 at Lisnasharragh. Below D/Superintendent AB was D/Inspector AA who was present in the Ops Room throughout the operation on 25 November 1992 and who exercised effective hands-on control throughout the operation as it progressed. My understanding is that D/Superintendent AB was in overall control but that the effective handling of the operation as it unfolded was delegated by him to D/Inspector AA unless circumstances permitted D/Superintendent AB to assume control. D/Superintendent AB would have had other important matters that demanded his attention from time to time. However, the evidence was that D/Superintendent AB and D/Inspector AA did discuss the unfolding situation and both agreed that a casual stop was the best course of action.

[139] The TCG has been likened to a trading house. It received intelligence information from military and police surveillance. It then passed this information out to the Liaison Officer of the HMSU, who at the time was Officer M. He was supported by Officer Q who kept the HMSU log. So in one room there was the Military Surveillance Liaison Officer, the HMSU Liaison Officer, Officer M and his log-keeper, Officer Q and D/Inspector AA. From time to time Detective Superintendent AB was in attendance when his other duties permitted him. All this work took place in close confines. The HMSU Liaison Officer and the log-keeper were able to hear the radio transmissions from the surveillance agents working to the Surveillance Liaison Officer. The same of course applied to D/Inspector AA and to D/Superintendent AB when they visited the Ops Room.

[140] The TCG from time to time would give directions to the HMSU Liaison Officer M as to what it wanted done on the ground. The HMSU Liaison Officer would then communicate to the officer in charge of the Call Signs on the ground. The HMSU Liaison Officer did not give instructions to these crews on the ground as to how they were to implement a direction, except in a general way. The officer in charge on the ground was entrusted with the task of ensuring that the direction or order from the TCG was effectively implemented. In this case the officer was Sergeant A, who as I have noted, was recognised as one of the most experienced anti-terrorist officers in active service.

[141] Thus, to summarise, the line of command was D/Superintendent AB who was in overall control. Below him was D/Inspector AA who assumed control when D/Superintendent AB was engaged in other matters. D/Inspector AA would seek clearance from D/Superintendent AB as and when required. Below D/Inspector AA was Officer M who was assisted by Officer Q. The latter two were in direct contact with the four call signs and in particular Call Signs 8 and 12 of which Sergeant A was in command on the ground. Officer M provided tactical support but specific tactical decisions were made by Sergeant A on the ground according to local conditions. Accordingly, Sergeant A was directed to effect a casual stop, but how that was carried out was a matter for Sergeant A. When the Deceased drove off at speed the decision to give chase was one for Sergeant A to take in the light of all the circumstances. This seemed to me to be both a reasonable and unexceptional command structure. There was no evidence that either this command structure or the planning and control of this operation for which it was directly responsible increased in any way the potential for recourse to lethal force.

K. LOGS, PRESS REPORTS AND DISCLOSURE

[142] The only contemporaneous official document recording the events as they unfolded, apart from notebooks and journals kept by the officers, was the logbook of the HMSU produced to the inquest. It is surprising there is no TCG log. Indeed some of the witnesses seem to think that a TCG log would normally be kept. Officer Q was the log-keeper for HMSU and it was his job to write it up as the operation progressed. Although Q had been on duty from 1.00pm that afternoon, the first entry in the log was timed at 5.03 and records:

> "Blue Sierra L283 GNK mobile".

It then goes on to set out what happened in respect of the red Orion BDZ 7721, driven by the Deceased, the subsequent search of the premises at Nos 2 and 4 Arizona Street and finishes with all the Call Signs returning to base at 6.26. After that there is a debrief involving the various officers who took part in the operation that afternoon. The notes of the debrief are also produced contemporaneously and those notes rely, to some extent, on the log kept by the HMSU.

[143] There are a number of matters which call for comment.

(i) There was no TCG log available for the hearing. I was told that no contemporaneous record was kept of what happened by the TCG during that afternoon. This seems to be unusual given that if there was an incident, a log kept by the TCG might provide a sound chronological background to the events under consideration. D/Superintendent AB was in overall control on the day in question, although as I have said not in operational control. He told the inquest in October 2012 that the TCG kept its own separate log. The entries would have been made by D/Inspector AA or "a member of staff

would have made it for him". He agreed that there would have been three different versions, the handwritten one, the typed version and the one recorded in the computer. Three and a half years later at the inquest before me his evidence had changed. He denied that the TCG kept a separate log. He said that what actually happened was that the HMSU and Surveillance Liaison Officers kept logs and that these were entered by TCG into its computer. Mr Macdonald QC for the next of kin asked him:

> "How did you keep your times correct as an independent TCG record if, in fact, you were just taking them a week later from the HMSU log?"

D/Superintendent AB replied:

> "Well we would have, as I have said, we would make notes in our own journal. We would get all the timings and all from HMSU and the detachment and we would put … my deposition, my statement here is an exact copy of the notes I made in my own personal journal."

He then claimed he may have been misunderstood at the earlier inquest and that D/Inspector AA did not keep a separate log. D/Inspector AA said that he kept his own notes and that these had been handed over to CID. No surveillance log was ever produced.

(ii) The HMSU log was unsatisfactory in many respects:

(a) It was kept on foolscap sheets of paper which were then torn out of the notebook apparently and stapled or otherwise bound together for further use. They were retained with all papers relating to the operation. The sheets were not numbered sequentially. A log would sometimes be kept in a bound volume which, especially if it had numbered pages, would have made doctoring the original record that much more difficult. It is most unfortunate that the logbook was not kept in a numbered and bound volume.

(b) The notes commenced at 5.03 with the blue Sierra entry. The explanation given at the 2012 inquest for there being no notes prior to this time despite there being ongoing activity all afternoon was that the log started with the instructions to stop the car. That is plainly not the case.

(c) In October 2012 Officer Q had said that the operation only went live at 5 o'clock. "The log was started because the direction was given that they may stop the vehicles". However, on at least two earlier occasions

that afternoon, or perhaps three, instructions were given to effect a stop and no record of those instructions was placed in the log.

(d) At the hearing in 2016 Officer Q said that there was nothing of relevance prior to 5.03. Again that does not square with the intelligence about the Orion and the instructions given to the Call Signs prior to 5.03. He then claimed that the HMSU log was a "reactive log" as opposed to a surveillance log. He was then asked about some of the activities of the Call Signs which should have been recorded and he said "I don't believe it happened". Officer M also drew attention to it being a response log. He said that an –

> "HMSU log starts whenever they were tasked actually to do something".

The problem with that explanation is that it was inconsistent with what had happened. The Call Signs had been tasked to do something but then subsequently stood down. Yet nothing was recorded. I found Officer M's answers evasive and unconvincing on this issue. At one stage he said:

> "They [the Call Signs] were tasked out, My Lord, to be in a position that if they were requested to put in a stop on a vehicle they were out and ready but the tasking never come [sic]."

(e) In any event, if a purpose of the log was to help establish a chronology as to what had happened at any subsequent debrief, which was one of the reasons offered for keeping the HMSU log, the reactive/response log as defined by Officers Q and M was worse than useless omitting as it did important pieces of key information.

(f) Mr Macdonald QC pointed out that before any "tasking" had taken place that afternoon Officer M had asked in answer to one of his questions to see the log to assist him in answering it. When challenged as to why he wanted to see a log which recorded reactive responses only Officer M claimed that he had confused the log with the debrief notes. Officer M then tied himself up in knots explaining the blue Sierra and "both" in the next entry. He claimed that this referred not to the Orion and the Sierra but to the Orion and another car entirely, a Cavalier which had never been mentioned before in the log.

[144] The evidence of Officers M and Q on the logbook issue was inconsistent and contradictory. Their explanations as to why it commenced at 5.03 were entirely unconvincing. I had an opportunity to watch as Mr Macdonald QC cross-examined

them and I did not believe their testimony on this issue. I consider that one or both of them had edited the original log by removing all entries made before 5.03 pm.

[145] I am unclear as to whether there was a separate TCG log and indeed any Military Surveillance log. I am however satisfied that there was a much fuller HMSU log than the one produced by Officers Q and M for this inquest. I consider that it is likely that there were earlier entries prior to 5.03 on different sheets and that these had been removed and probably destroyed. The relevance and importance of Officers Q and M seeking to edit the documentary evidence I will discuss later.

[146] I had the opportunity to look closely at Officers A, B, C, D, E and F when they were recalled to give evidence on the issue of whether they had been told that DP2 was using the Orion car. They all answered spontaneously. There was no hesitation. I was unable to detect any prevarication. They appeared to me to be telling the truth. For some reason Officers M and Q did not pass on the intelligence that DP2 might be driving the Orion. PSNI's legal representatives urge me to conclude that the CID interview notes exonerate Officer M because in these he refers to the task of casually identifying the driver. Accordingly, these provide support for the claim that he did not know who the driver was for definite. The direction to check the occupant is a neutral instruction. It could be given either to confirm the identity of the driver of the Orion or to discover the identity of the driver of the Orion. The direction is unexceptional and does not assist me one way or the other in resolving this issue.

Further, I can see no plausible explanation as to why he would not have received the intelligence information which came in at 3.40 which identified DP2 as using the red Orion. Furthermore, if Officer M is not at fault then D/Inspector AA who, at the very least, knew that a well-known PIRA activist was using the Orion on PIRA business (because he said so in his contemporaneous statement) is at fault for not ensuring that this critical information reached the crews on the ground. D/Inspector AA did say that this intelligence about DP2 would have been disseminated. If the evidence had been passed on to Call Signs 8 and 12, Sergeant A says that that would have made no difference to the way in which they attempted to stop the Orion. Nor would it have made any difference to the chase that subsequently ensued. However, it may have assisted Sergeant A in defending his actions in shooting the driver of the Orion in the particular circumstances. If DP2 was a hardened terrorist, and Sergeant A knew that, then logic would suggest he had even more reason to fear that the driver of the Orion could resort more readily to armed violence, if challenged. Sergeant A's fear when, on his account, the Deceased spun round should have been even more acute. I appreciate that it was Sergeant A's testimony that it was his experience that PIRA members when caught red-handed, would surrender and not engage in a fire fight when faced with overwhelming armed police presence. But it made no sense for the police officers in Call Signs 8 and 12 to deny that they were informed that DP2, a confirmed terrorist was thought to be using the Orion, if in fact that intelligence had been given to them.

[147] I have been searching for reasons as to why M and Q would not have passed on that information to the Call Signs out on duty that day. It is clear from the evidence Officer M was under pressure and required to work excessively long hours. On this occasion he may simply have made a mistake and forgot to convey this important piece of evidence to the Call Sign crews. Certainly neither M nor Q made the case that this information was passed to Officers A, B, C, D, E or F. But I did not believe Officer M when he said that he did not know who DP2 was or that he was unaware of DP2's participation in the events at the Whiterock Leisure Centre. I can see no earthly reason why D/Inspector AA would not have communicated this information to Officer M. Indeed, it is likely that D/Inspector AA got it from Officer M. Either Officer M passed the information to D/Inspector AA having received it through a radio transmission or they both heard the information at the same time. The absence of any log entries before 5.03 pm is a direct consequence, I conclude, of the decision of Officers M and Q to hide the fact that DP2's identity was known to them earlier in the afternoon and recorded in the log.

[148] During the hearing police witnesses were asked about press reports in the days following the shooting of the Deceased which claimed that there had been a mistake and that the police had shot the wrong man. For example, the Daily Mirror claimed that there had been a mix up over a radio message which may have had led "undercover cops to shoot dead IRA member Pierce Jordan" (sic). The News Letter stated the killing of Pearse Jordan was a result of "a botched security operation". It was claimed that for three hours after the shooting the officers involved had believed that they had killed a different man, a terrorist who had gone into hiding. None of the officers involved in the shooting when questioned at this inquest knew anything about any mix up being reported in the press, which I find strange, given the roles that they played in the Deceased's death. They were all clear that:

(a) There had been no mix up.

(b) They had not been given the name of DP1 or DP2, as the man who might be driving the Orion on that fateful evening.

[149] In a military intelligence report which was received after the incident the name of DP1 was used. This was subsequently crossed out and the name "Patrick Pierce Jordan" (sic) substituted, as being the driver of the Orion who had been shot dead on the Falls Road on 25 November 1992. At about 8.30 am on that morning D/Inspector AA briefed Detective Superintendent AB, his superior, with regard to the possibility of a munitions movement by PIRA in West Belfast later that afternoon. In a statement made on 1 December 1992 Officer AA said:

> "At 3.40 pm there was a report .. that a red Orion BDZ7721, was being driven in the area of Whiterock Leisure Centre, **by a known PIRA activist** and appeared to be on PIRA business." (Emphasis added)

Clearly this could not have been the Deceased as his identity was unknown to the police or to the military and at that time he was believed to have no involvement whatsoever in terrorist or criminal activity. He was in fact DP2 who had been erroneously referred to as DP1, in a subsequent military document following the Deceased's death.

[150] Chief Inspector Lowry gave evidence at the inquest and he offered the explanation that this confusion about the identity of the driver had arisen because the "Blues", local police officers working in West Belfast, who had arrived on the scene after the incident but before Chief Inspector Lowry arrived, had concluded that DP2, a well-known PIRA activist, had been shot and had passed that information to Chief Inspector Lowry when he arrived. It is not clear whether Chief Inspector Lowry was only given his surname. There was a suggestion that the two men bore a resemblance to each other. Chief Inspector Lowry then said that he had a conversation with a councillor for the area and he told him what he had heard, namely that DP2 had been shot, but that this was said in the strictest of confidence. He believes the councillor then leaked that information to the press. The following evening he saw the councillor on television claiming that he had been misled by a senior police officer when it turned out that the shot man was not DP2 but the Deceased. It is possible that the name of DP2 could have leaked into the public domain in this way. In any event a solicitor's letter arrived with the police shortly thereafter complaining that their client, DP2, had been wrongly identified as the Deceased.

[151] I had asked that another search be carried out by the PSNI for DP1. PSNI did this and also initiated a search using the same surname but the first name of DP2. This produced further materials relevant to the shooting of the Deceased. These documents revealed the surveillance report of 25 November 1992 from the Whiterock Leisure Centre which recorded that DP2 and an unknown male were seen in the red Orion. DP2 had gone into the leisure centre while the unknown male, presumably the Deceased, had remained in the car. There were two young fellows acting as "dickers" at Whiterock Corner and the conclusion from the intelligence source was that DP2 was delivering or collecting "gear".

[152] DP2's profile was also revealed. This included the following:

(i) He had been recruited into PIRA in 1987.

(ii) He was Quartermaster of PIRA in the New Barnsley/Moyard area by 1989.

(iii) He was regularly involved in PIRA activity. This included acting as look out for a shooting attack in 1991, participating in numerous attacks on New Barnsley RUC Station which involved both shooting and throwing blast bombs. In October 1991 DP2 was involved in moving a Semtex bomb from a house and was subsequently arrested

and charged with conspiracy to murder and possession of explosives with intent.

The explanation offered by the PSNI for this evidence about DP2 not being available at an earlier stage is that it searched against the name DP1 which is the one used in the initial military report and that exercise produced nothing of relevance. They then conducted a search using a different Christian name with the same surname. This produced further material. Apparently, DP2 was not in any file or listed or linked to any computer system related to the death of the Deceased. The failure to make this disclosure by the PSNI is either sinister or simply gross inefficiency, if PSNI's explanation is accepted. It is not possible for me on the material available to make a final determination as to which is the correct explanation. It is however, a further cause for disquiet which must form part of the background when I come to judge the police account of what happened on the night in question.

[153] There is no doubt that the intelligence about DP2 being at Whiterock Leisure Centre was sent through at 3.40 to the TCG. As I have said it is inconceivable that this vital information was not passed on by TCG to Officers M and Q who were running the HMSU Call Signs. Indeed, the evidence of D/Inspector AA as I have recorded, was that such intelligence would have been disseminated. This information made it more likely that munitions were being moved in the red Orion involving as it did a well-known PIRA activist who had been a Quartermaster and who had also been involved in moving explosives on at least one other occasion. It also increased the risk that DP2 might be armed and that, given his history of violent confrontation, might be dangerous, if confronted. More importantly the various Call Signs would also have needed to have known that DP2 might be armed and that there was an increased risk that he might attempt to shoot his way out of a confrontation. The failure to pass this important piece of intelligence on helps explain:

(a) Why there was no TCG log.

(b) Why the HMSU log commences at 5.03 pm.

(c) The statement made by AA referring to a well-known PIRA activist.

[154] I also consider that there can be no good reason why Officers M and/or Q should not have passed this information on to Calls Signs 8 and 12 at the very minimum. This was vital information. The crews were entitled to know that the man in the red Orion might be a PIRA activist with a record of moving munitions and shooting at the police. Indeed this information may have shaped the way in which the police behaved because of the risks that might be associated with stopping such a potentially dangerous terrorist. However, it is fair to point out that Sergeant A made clear in giving his evidence that the identity of the driver of the Orion would not have materially affected his decision as to how the Orion was best stopped.

[155] I conclude that:

(a) Officers M and Q were untruthful in their testimonies when they claimed that they had no idea that there was a real possibility the driver of the Orion was DP2, a hardened member of PIRA with a history of involvement in explosives and firearms.

(b) Officers M and Q did not pass the information about the identity of DP2 to any of the Call Signs and to Calls Signs 8 and 12 in particular.

(c) TCG and HMSU did believe that initially DP2 had been shot.

(d) While Chief Inspector Lowry may have told the councillor in confidence that the Deceased was DP2, this was not the entire reason for the press reporting that there had been a "botch up" or DP2 being identified as the person who was shot. The "Blues" may also have wrongly identified the Deceased as DP2.

[156] I do not accept that all the police officers from HMSU who gave evidence were unaware that the press were reporting the incident as an operation that had gone wrong. While I can accept that it is possible that some of them did not learn how it was reported in the press, experience dictates that human curiosity would have ensured that some of them would have made it their business to find out how the killing had been reported. In addition they may have shared these findings with each other. I am not in a position to identify those officers who positively knew about the adverse press reports and those who did not. However, I do not accept that these press reports of a mix up were unknown to all the members of Call Signs 8 and 12 in the aftermath of the killing. This means that some officers, I am not sure who, misled the inquest on this issue.

[157] Finally, I am satisfied that there can be no criticism of PSNI's legal representatives. When asked by me to carry out a further search against the name of DP1 they obtained no further documents of relevance. Of their own initiative they searched against a different first name, and the further documents were recovered. These were then made immediately available to the legal teams of the Coroner and the next of kin. However, the fact that this document only appeared late in the day, suggests that the PSNI's document retrieval and indexing was inefficient or that someone deliberately kept this document back. I do not have enough information to reach a firm conclusion.

L. THE ORION, ARIZONA STREET AND THE DECEASED

[158] The intelligence which had been received on 25 November 1992 was to the effect that PIRA intended to move munitions in West Belfast. The term munitions encompasses both guns and explosives. It was not clear whether the munitions were

being moved to another hide or whether the intention was to detonate a bomb in the city centre.

[159] A surveillance operation was being carried out that day at Arizona Street not on the basis of any particular intelligence but in "our belief that terrorists used Arizona Street to prepare materials for their operations" (Officer AB). At 3.40pm information was received that a red Ford Orion, BBZ (number then unknown) was either delivering or collecting PIRA munitions in the vicinity of the Whiterock Leisure Centre. The report identified DP2 and an unknown male, presumably the Deceased, as using the Orion which had been hijacked earlier that day from Emanuel Cullen.

[160] It is clear from the search of the Orion that was carried out subsequent to the shooting that there were traces of ammonium nitrate in the boot. Four samples were consistent with this nitrate based fertiliser. Two also contained sugar "and were recovered from the boot floor and the lip of the boot" (as per the statement of Walter McCorkell, Senior Scientific Officer). As I have recorded earlier, this substance, that is ammonium nitrate which can, together with sugar, be used as an improvised explosive, was also recovered from the garage. In the follow-up search of 2-4 Arizona Street after the shooting the police found melted, collapsed remains in a wheelie bin where a fire had been started at the rear of 6 Arizona Street. A substance at the base of this was identified as the same improvised explosive mixture found in the boot of the Orion. Also recovered from the garage to the rear of 4 Arizona Street was a TPU. It is a self-contained unit:

> "that will provide both a timer delay and power source for an explosive device. During transit or storage these units will have an insulator separating the moving and stationary contacts, such as the tape present … and a length of dowel next to the microswitch. When these units are used in explosive devices a detonator would be connected to the output leads and a pre-set time delay, maximum 60 minutes set on the modified timer. The unit becomes armed once the dowel and insulator are removed and the device would function once the pre-set time delay expired."

[161] There can be no real doubt that the Orion had been used that day to transport improvised explosives and that such explosives were being stored or manufactured at the rear of 2-6 Arizona Street. The presence of a TPU indicated the intention of the terrorist was to make some sort of bomb which would be used to inflict damage, suffering and misery on Belfast and its citizens.

[162] The role of the Deceased in all of this is unclear. Following his death he was claimed as a member of PIRA. He had no criminal convictions and he had not come to the attention of the police or army as being involved in terrorism before this

incident. Evidence was given that PIRA tried to make use of unconnected young men to transport munitions or car bombs as they were less likely to be stopped by the police or the army at checkpoints. The Deceased was the subject of testing afterwards and this served to confirm that he had no traces of explosives on his person or clothing. Mr Macdonald QC referred to him on at least one occasion as a water carrier, conveying the impression of someone who was carrying out a lowly role within PIRA. It was also suggested to at least one police witness that when the attempted stop took place, the Deceased might have been leaving the Orion back to where it was hijacked at the Whiterock Leisure Centre, as this was the route that would have been taken. It was said that often PIRA would return hijacked cars to their owners after whatever business the cars were taken for had been accomplished.

[163] It is not possible to say with any degree of certainty what the Deceased was doing on the afternoon of 25 November 1992, save to say that he is likely to have been at Whiterock Leisure Centre in the company of DP2 and involved in the movement of homemade explosives whether by driving the Orion or by providing logistical support on the ground. But there can be no doubt that after 5.00pm he was driving a car for PIRA along the Falls Road and that this car had been used that afternoon to transport improvised explosives or substances to be used for the manufacture of homemade explosives. Where the Deceased was taking the Orion is not clear. As Mr Macdonald QC put to a police witness during cross-examination young men did join terrorist organisations for a variety of reasons which included idealism and greed, and could be a consequence of naivety as opposed to the desire to commit evil deeds. While this may be true, what cannot be in any doubt is that anyone assisting PIRA in 1992 would have known that in doing so they would be complicit in the bombings and shootings being carried out by PIRA at that time and that such assistance would inevitably contribute to the potential loss of life, both of civilians and members of the security forces, huge damage to property and the violent disfigurement of Northern Ireland. However, in no way did membership of such an organisation or indeed lending assistance to such a terrorist group, mean that such a person had in some way forfeited the right to be protected by the law. Such a person is still entitled to the full protection of the law which includes the presumption of innocence, the right to a fair trial and the right to have legal representation. The rule of law demands no less. He does not become an outlaw who can be summarily executed whether by officers of the State or otherwise. The legal representatives for all the parties involved in this inquest not surprisingly all agree on this fundamental proposition. It is only in carefully defined and circumscribed circumstances, which I will discuss in the section entitled "Article 2 - Self-Defence", that a police officer can open fire on a civilian. The central issue in this inquest is whether or not this was one such occasion.

M. THE DEBRIEF

[164] Much discussion centred around the debrief which was held after the incident back at Headquarters in Lisnasharragh. Officer V, Head of the HMSU, came in although he was on annual leave, to ensure, he said, that the mistakes made in 1982

were not repeated. This referred to the incidents which took place in 1982 and involved various shootings by the police resulting in the deaths of a number of different persons, most of whom were members of PIRA. These were the subject of the Stalker Sampson Reports which again I will discuss in more detail later in this judgment. They were:

(a) Tullygally Road East, Craigavon on 11 November 1982 where Gervaise McKerr, Eugene Toman and Sean Burns were shot and killed.

(b) Ballynerry Road North, Lurgan on 24 November 1982 where Michael Tighe was shot and killed and Martin McCauley was shot and severely injured;

(c) Mullacreevie Park, Armagh on 12 December 1982 where Seamus Grew and Roddy Carroll were shot and killed.

[165] Officer V had an initial conversation with the Chief Superintendent and the Superintendent from E Division although he has no recollection of this and cannot remember what was said. Mr Macdonald QC suggested that there was something sinister about their presence at the debrief and that they were there as part of a cover up operation and particularly drew attention to the fact that Officer V had been off duty. But as I have said Officer V's response was that off-duty or not, the responsibility of his command demanded his presence at an event of such significance.

[166] Officer V then spoke to Dr Crowther with Officer M present to enquire about Sergeant A's mental and physical welfare. (The formal medical examination only took place after the debrief.) He says that Officer M conducted the subsequent debrief with the aid of a whiteboard. He says that he has no recollection of any log being produced, although it is likely that the log kept by the HMSU was used to assist with timings. Some of the other officers have suggested that Officer V was in control of the debrief but it may be that this refers to his rank rather than the role that he adopted. Officer V himself says that he remained silent throughout and simply observed to ensure that an accurate chronological history of what happened was obtained and that this could then be used to assist the CID who could not be there for a further 23 hours. The assumption upon which the parties appeared to operate was that this delay was a direct result of the pressure upon CID who were apparently inundated with various investigations. This assumption was never tested. I have been offered no first hand evidence as to why such a serious incident did not warrant immediate investigation. Clearly prompt attendance by CID would have assisted in the investigation of the death. It does appear that Sergeant A gave the first account at the debrief of what happened when Call Signs 8 and 12 went to stop the Orion. There were then contributions from some of the other officers.

[167] It is contended that a problem arises with such a debrief in that if Sergeant A gives his story first his version will necessarily have the effect of causing the other

officers to fall into line. They would give supporting accounts, anxious not to undermine a colleague, who was their commanding officer, someone whom they regarded highly and on whose judgment their very lives depended on a daily basis. These were all men involved in a relatively small close-knit unit tied together with bonds of loyalty who were never going to betray one of their own, even if he had done wrong, it is claimed. The Hillsborough inquest provides a recent example of police ranks holding firm for years and telling lies to protect their own rather than ensuring that the unvarnished truth of what occurred, emerged.

[168] A debrief was standard practice at that time and one can see that it does have advantages in that it establishes a clear chronology at an early stage when events are still fresh in the minds of those who participated. However, there is no doubt that such a debrief has at least the potential to allow all the officers taking part in it to get "their story straight". It would undoubtedly have been better practice if Sergeant A, at least, had been isolated and all the other officers had given their version of events independently to the CID. The problem is that Officer V never saw Sergeant A as a suspect although he should have. He accepted that any interview of Sergeant A after the shooting should have taken place only while Sergeant A was under caution, thereby contradicting his original answer that he could not be considered a suspect. As counsel for the next of kin suggested with great effect, by ensuring that Sergeant A narrated his version of events first, HMSU created an environment where the person who should have been interviewed as a suspect was able to influence those others who had witnessed the incident. In fairness to Officer V he was not and did not pretend to be an investigator and had limited experience in questioning suspects.

[169] The problem is that although the potential for debriefs to unbalance an investigation had been highlighted in the earlier Stalker/Sampson Reports and it had been recommended that the practice be stopped, and I will come back to this issue later on in this judgment, this recommendation had never been acted upon by the RUC or PSNI. Since the incidents in 1982 there had been countless debriefs following terrorist incidents. Officer V suggested he had conducted one per day. He left the RUC in 1996 none the wiser as to the recommendation of Stalker Sampson. I pause to note that in the investigation into the death of Neil McConville some ten years after the Deceased's death a debrief was still part and parcel of the investigation process albeit that on this occasion it was held in the presence of representatives of the PONI.

[170] Colin Sampson, Chief Constable, in his report on the deaths in 1982 had said:

> "The debriefs held by senior Special Branch officers within a matter of hours of the incident were, in my view, quite irregular and should not have taken place. The officers involved in the shooting were regarded as potential suspects and yet, not only were they comprehensively debriefed, but restrictions were placed

> on what they could or could not say in their subsequent statements to the CID."

[171] The recommendation he made was that:

> "The policy and practice should in the future reflect the paramountcy of the CID investigations which includes the preparation of evidence and the questioning of suspects and witnesses free from any constraints placed upon that investigation by Special Branch."

[172] There was an egregious failure to learn from the findings in that report and a failure or refusal on the part of the Chief Constable(s) to implement the recommendations by ensuring that any future CID investigations into the deaths of civilians who had been killed by the police or Army were unsullied by actions taken immediately after any shooting. No explanation has been offered for these failures which have cast a shadow over the present inquest. Officer V has been left to defend the indefensible while those who bore the responsibility for putting into effect the recommendations made by Stalker Sampson have not had their action or inaction challenged at this inquest.

N. ARTICLE 2 - SELF-DEFENCE

[173] Article 2 of the ECHR states:

> "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
>
> 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
>
> (a) in the 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."

[174] The use of force in self-defence provides a defence at common law in prescribed circumstances. The law governing the use of force in the prevention of crime and lawful arrest in 1992 was based on statute and is found in Section 3 of the Criminal Law Act (Northern Ireland) 1967. This states:

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

This applies to the use of force to prevent, for example, the shooting of fellow officers.

[175] In Beckford v The Queen [1988] AC 130 Lord Griffiths said (at page 145) that:

> "… The test to be applied for self-defence is that a person may use such force as is reasonable in the circumstances as he honestly believes them to be in the defence of himself or another."

Accordingly, if Sergeant A had an honest belief that the threat was real (and makes no more than a proportionate response), it is immaterial that his belief was unreasonable, albeit the reasonableness or otherwise of that belief will be relevant to the question of whether it was honestly held.

[176] The common law definition of self-defence was subsequently incorporated into statute with the passing of Section 76 of the Criminal Justice and Immigration Act 2008. Obviously this was not in force at the time of the killing but it does set out clearly what was the previous position at common law. It states at Section 76(3):

> "The question whether the degree of force used by D was reasonable in the circumstances is to be decided by reference to the circumstances as D believed them to be and sub-sections (4) to (8) also apply in connection with deciding that question.
>
> (4) If D claims to have held a particular belief as regards the existence of any circumstances –
>
> (a) the reasonableness or otherwise of that belief is relevant to the question whether D genuinely held it; but
>
> (b) if it is determined that D did genuinely hold it, D is entitled to rely

on it for the purpose of sub-section (3) whether or not –

(i) it was mistaken, or

(ii) (if it was mistaken) the mistake was a reasonable one to have made.

(5) But sub-section (4)(b) does not enable D to rely on any mistaken belief attributable to intoxication that was voluntarily induced.

(6) The degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances.

(7) In deciding the question mentioned in sub-section (3) the following considerations are to be taken into account (so far as relevant in the circumstances of the case) –

(a) that a person acting for a legitimate purpose may not be able to weigh to a nicety the exact measure of any necessary action; and

(b) that evidence of a person's having only done what the person honestly and instinctively thought was necessary for a legitimate purpose constitutes strong evidence that only reasonable action was taken by that person for that purpose.

(8) Sub-section (7) is not to be read as preventing other matters from being taken into account where they are relevant to deciding the question mentioned in sub-section (3)."

[177] It will be noted that this provision is considered to be identical "to the common-law rules governing the use of self-defence and the rules applicable to prevention of crime": see A3.56 of Blackstone's Criminal Practice (2016).

[178] There has been some controversy about whether self-defence is Article 2 compliant and whether the defence should be subject to honest belief only on objective grounds, certainly so far as armed police officers of the State are concerned. According to statistics cited on the website of the organisation inquest (http://Inquest.org.uk/Statistics/Fatal-Police-Shootings), there have been 60 deaths caused by police shootings in England and Wales in the period 1990 to 2016. (Note that those figures are derived from inquest's monitoring of casework and are independent of those produced by the Home Office and other government agencies.) In Northern Ireland there have been 3 fatal shootings during this time. There have been no convictions in either jurisdiction for homicide.

[179] In Armani Da Silva v UK (Application no. 5878/08) the applicant complained about the decision not to prosecute any police officers following the fatal shooting of her cousin Jean Charles de Menezes by police officers on 22 July 2005.

[180] The circumstances leading up to that were that four suicide bombers had detonated explosives on London Transport, three on the underground trains and one on a bus. 56 people had died. On 21 July 2005 two weeks after the bombings, four explosive devices were discovered in rucksacks left on three underground trains and on one bus. During the operation to find the bombers, a Brazilian national who lived at an address in Scotia Road, London, close to where one of the suspects lived, was wrongly identified as being a suspect as he left his home. He was followed onto the platform of Stockwell Underground Station and onto a train. Mr de Menezes who was unarmed was shot several times and killed by two police officers. Both marksmen claimed that they believed that they were acting in self-defence and that they were right in law to use the force that they did. An inquest was held. The DPP concluded that there was insufficient evidence to prosecute. Mr de Menezes was unarmed and completely innocent of any involvement in any terrorist activity.

[181] It is important to note that the ECtHR did not consider in the Da Silva case the issue as to whether the force which was used was "absolutely necessary" per Article 2 or whether the operation was planned with sufficient care so as to be compatible with the requirements of Article 2. The ECtHR did consider a number of requirements which were necessary for an investigation into the use of lethal force by state agents to be "effective". At paragraph 240 of the judgment it stated:

> "In summary, those responsible for carrying out the investigation must be independent from those implicated in the events; *the investigation must be adequate*; its conclusions must be based on thorough, objective and impartial analysis of all relevant elements; it must be sufficiently accessible to the victim's family and open to public scrutiny; and it must be carried out promptly and with reasonable expedition." (Emphasis Added)

Quite clearly for reasons which I refer to above this inquest has been carried out neither promptly nor with reasonable expedition. As far as I am concerned the investigation has been adequate and independent and I trust its conclusion is based on a "thorough, objective and impartial analysis of all the relevant elements, sufficiently accessible to the next of kin and open to public scrutiny."

[182] However, in the course of its judgment the ECtHR did comment on the law of self-defence as it operates in the UK and professed itself satisfied that the defence was Article 2 compliant even though it made no reference to the words "absolutely necessary" which are used in Article 2 of the Convention.

The Court at paragraph 244 referred to the test it consistently applied and which was set out in McCann & Ors v UK [1996] 21 EHRR 97 at paragraph 20 where it said:

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

[183] The Government had argued before the Court that the reasonableness of a belief in the necessity of lethal force should be determined subjectively. A third party intervener had submitted that an honest belief had to be assessed against an objective standard of reasonableness. It was this issue that the Court sought to determine.

[184] The Court went on to say at paragraph [245] that:

> "… it cannot substitute its own assessment of the situation for that of an officer who is required to react in the heat of the moment to avert an honestly perceived danger to his life or the lives of others; rather, it must consider the events from the viewpoint of the person(s) acting in self-defence at the time of these events (see, for example Bubbins, cited above, 139 and Giuliani and Gaggio cited above, 179 and 188). Consequently, in those Article 2 cases in which the Court specifically addressed the question of whether a belief is perceived, for good reasons, to be valid at the time, it did not adopt the standpoint of a detached observer; instead it attempted to

> put itself into the position of the person who used lethal force, both in determining whether that person had the requisite belief and in assessing the necessity of the degree of force used …"

The Court then commented at paragraph [246]:

> "Moreover, in applying this test the Court has not treated reasonableness as a separate requirement but rather as a relevant factor in determining whether a belief is honestly and genuinely held. In McCann & Ors the court identified the danger of imposing an unrealistic burden on law-enforcement personnel in the execution of their duty. Therefore it found no violation of Article 2 because the soldiers *honestly believed, in the light of the information that they had been given, as set out above, that it was necessary to shoot the suspects in order to prevent them from detonating a bomb and causing serious loss of life* … A similar approach – that is, one focussing primarily on the honesty of the belief – can be seen in many other cases …" (Emphasis added)

[185] It will also be observed that at paragraph [248] the Court noted that:

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

[186] The Court pointed out that in cases of alleged self-defence it found it a violation of Article 2 where it did not accept that a belief was honest. Accordingly, it concluded at paragraphs [251] and [252]:

> "251. It is clear both from the parties' submissions and the domestic decisions in the present case that the focus of the test for self-defence in England and Wales is on whether there existed an honest and genuine belief that the use of force was necessary. The subjective

> reasonableness of that belief (or in the existence of subjective good reasons for it) is principally relevant to the question of whether it was in fact honestly and genuinely held. Once that question has been addressed, the domestic authorities have to ask whether the force used was "absolutely necessary". This question is essentially one of proportionality, which requires the authority to again address the question of reasonableness: that is, whether the degree of force used was reasonable, having regard to what the person honestly and genuinely believed (see paragraphs 148-155 above).
>
> 252. So formulated, it cannot be said that the test applied in England was significantly different from the standard applied by the court in the McCann & Ors judgment and in the post McCann & Ors case-law (see paragraphs 244-248 above). Bearing in mind that the court has previously declined to find fault with the domestic legal framework purely on account of a difference in wording which can be overcome by the interpretation of the domestic courts (see Purk v Turkey and Giulini and Gagio) cannot be said that definition of self-defence in England and Wales falls short of the standard required by Article 2 of the Convention".

Both the next of kin and the PSNI took no objection to these paragraphs and both agreed that this sets out the correct test for the defence of self-defence.

[187] 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".

[188] Article 2 also requires the State investigating a death that is a consequence of actions by State agents to do so with due expedition. At paragraph [108] in Hugh Jordan v The United Kingdom (Application No: 2746/94) the ECtHR said that "a requirement of promptness and reasonable expedition" was implicit in the State's obligation to carry out an effective investigation of a death of a civilian at the hands

of the State's agents. This accords with international law. Paragraph 9 of the United Nations Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions adopted on 24 May 1989 by the Economic and Social Council Resolution 1989/65 provides, inter alia, that:

> "There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances."

[189] It also accords with domestic law. Rule 3 of the Coroners (Practice and Procedure) (NI) Rules 1963 states:

> "On being notified of any death the Coroner shall, without delay, make such inquiries and take all such steps as may be required to enable him to decide whether or not an inquest is necessary, and *every inquest shall be held as soon as is practicable after the Coroner has been notified of the death*." (Emphasis added)

[190] As Lord Bingham said many years ago in Jordan v Lord Chancellor and Another [2007] UKHL 14 this case has been "dogged by severe delay". Stephens J at first instance in In the matter of three Applications by Hugh Jordan for Judicial Review [2014] NIQB 11 looked at the requirement of promptness and reasonable expedition in respect of Article 2. He noted that Weatherup J had considered the requirements of promptness and reasonable expedition in Julia Mongan's Application for Judicial Review [2006] NIQB 82. He then set out at length various legal principles which were applicable and procedures which were appropriate in respect of the requirement of promptness and reasonable expedition at paragraph [125] of his judgment. I respectfully adopt those principles. He noted that Hart J had exonerated the Senior Coroner in respect of delay prior to June 2009. Stephens J concluded at paragraph [349] as follows:

> "The applicant relied on a number of periods of delay on the part of the PSNI. I do not propose to analyse all of them. As will become apparent I am content that the PSNI have both created obstacles and difficulties which have prevented progress in the inquest and have also not reacted appropriately to other obstacles and difficulties."

He then granted relief by way of a declaration in respect of the delay and reserved his position on the question of damages until he had heard further submissions.

There can also be no doubt that Hart J was unimpressed with the performance of the PSNI. He referred to the sustained efforts of the PSNI to avoid providing the next of

kin with documents and the "irrelevant" documents promised but not provided. Both of these matters led to very considerable delay. The government also contributed to the delay at this time by its dilatory behaviour in amending the Coroners Rules and failing to make legal aid available for inquests.

[191] The irony is that in delaying this inquest, the PSNI who, as I have explained earlier in this judgment, bear the burden (under Article 2 of the ECHR) of providing a "convincing and satisfactory explanation" for what happened on 25 November 1992, have made the task of satisfying the burden placed upon them immeasurably more difficult. The passing of time, nearly a quarter of a century, for the reasons which I have discussed already makes the task of the fact finder much more difficult. Consequently, the State, by delaying these investigations has placed itself at an inevitable disadvantage in trying to satisfy the Article 2 burden of proof.

[192] Finally, Article 2 requires the State authorities to plan the operation and put in place controls to minimise the need to resort to lethal force. In Bubbins v UK [2005] 41 EHRR 24 the ECHR said at paragraph 141:

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

However, it also emphasised at paragraph 147:

> "… the Court must be cautious about revisiting the events with the wisdom of hindsight."

O. REPRESENTATIONS MADE ON BEHALF OF THE NEXT OF KIN

[193] The primary representation made on behalf of the next of kin is that the Deceased was shot in the back at close range by Sergeant A without cause or justification. Their case is that Sergeant A believed that the driver of the car was DP2, a well-known PIRA activist who was suspected of involvement in previous gun and bomb attacks on the police. Sergeant A had a round in the breech prior to exiting the vehicle indicating a readiness to fire and he deliberately selected automatic mode. His actions, putting a round in the breech prior to leaving the vehicle, the speed at which he exited the vehicle, the decision to select automatic mode, all point to an intention to deploy lethal force. Sergeant A exited from the

vehicle rapidly and shot the Deceased as soon as he was in a position to do so. He did not panic or make an error of judgment. His experience and training would have equipped him so as not to do so. The Deceased was fleeing the Orion following its forced stop and in running across the road at most made a modest deviation in direction. He presented no threat to any policeman or anyone else at the scene.

[194] There is empirical evidence to support this version of events. The bullets which struck the Deceased were fired from his rear. The three gunshot entry wounds were:

(i) In the back of the left arm just above the elbow.

(ii) To the back of the left shoulder.

(iii) To the left side of the back.

[195] There were three corresponding exit wounds at the left forearm, the front of the left upper chest and the right side of the front of the chest. The shot to the left back passed through at an angle of 45 degrees. The gunshot wound to the left shoulder also passed through at an angle of 45 degrees. The trajectory of the bullets was not affected by striking any bone. The gunshot wound to the left back had an upward trajectory of 15 degrees. This shot was inevitably lethal and rapidly incapacitating. In the context of the case the findings sought by the next of kin "would be entirely in keeping with the Deceased being shot while running away from the shooter" according to Dr Cary. Professor Pounder and Professor Crane concur. If that is how the Deceased met his death, then his killing is without justification and contrary to Article 2. I understand that the PSNI do not contest such a conclusion if this inquest determines those are the circumstances in which the Deceased met his death.

[196] The fall-back position of the next of kin was that even if the version put forward by the PSNI was accepted despite its inherent implausibilities, Sergeant A did not believe his life or that of his colleagues was in danger and/or in any event the use of lethal force was not proportionate in the circumstances.

P. REPRESENTATIONS MADE ON BEHALF OF THE PSNI

[197] The case made by the police at the inquest is a very different one. Briefly summarised it is this. The police, because of in part what had happened that afternoon and the general climate of violence created by the paramilitaries in general and PIRA in particular, were under enormous pressure. The Deceased's decision to "do a runner" was compelling evidence that he was driving a car with either a primed bomb or munitions on board. It was likely that he was armed. He was rammed off the road by Call Sign 8 having refused to stop. He then dashed from the stationary car with his hands low and unseen by Sergeant A who had emerged from the front seat of Call Sign 8 and run to its rear. Sergeant A shouted "police halt" or

"halt police" with his sub-machine gun at the ready. The Deceased turned dynamically and Sergeant A fearing he was armed and about to shoot either him or his colleagues fired five bullets in automatic mode, three of which struck the Deceased. Sergeant A is adamant that although the Deceased was turning, he was facing him when he pulled the trigger. He also claimed it was an error on his part in flicking the safety switch off which meant that instead of firing a single shot as he had intended, he fired five shots in quick succession in automatic mode. Professor Pounder considers that this is a possible scenario and is consistent with the empirical evidence. Dr Cary disagrees fundamentally. The evidence of the pathology witnesses will be considered in detail below.

Q. THE EVIDENCE

(i) The Police Evidence

[198] It is quite apparent from the evidence of this inquest that the officers of the HMSU were operating for long hours under immense pressure. At this time it would appear that on many occasions it fell largely on them to try and hold back the forces of anarchy and violence. Officer D spoke of Belfast "getting whacked all the time". In respect of the intelligence they had received that there was a movement of munitions, he said, "I had every right to believe there was something in it". He spoke of his stress levels going "ballistic". These were men living on the edge, anxious, stressed, under pressure and yet determined to do their duty as police officers and so protect the civilians of Northern Ireland from the terrorist outrages which were planned to be visited upon them by groups such as PIRA. That afternoon they had been warned that there was a serious terrorist operation going on. They had been sent out and stood down at least twice. This would have served to ratchet up their anxiety and stress levels. There can be no doubt that they concluded from the flight of the driver of the Orion when he was asked to stop that there was a good chance that it was carrying a bomb. While Sergeant A made the point that such bombs are more stable than people generally think, there was an obvious and real risk to all the police officers in Call Sign 8 in ramming the Orion, that they would all be convulsed in an ensuing explosion if there was a primed bomb on board. Officer C, the driver of Call Sign 8 said that the adrenaline was flowing and that the thought of an explosion did not cross his mind. Officer C was exclusively focused on stopping the car which he believed might well be carrying death and mayhem into the centre of Belfast. These men were in an unenviable position. On the one side PIRA was determined to devastate Belfast with bombs in the run up to Christmas with the consequent risk to Belfast citizens and its buildings. On the other side was the Loyalist terrorist threat which was becoming increasingly more difficult to restrain. That these men would risk their lives in such circumstances gives an insight into the highly charged conditions these officers were operating under and their imperative of thwarting PIRA's campaign to bomb Belfast.

[199] Sergeant A told the inquest that as the Orion emerged on to the Falls Road Call Sign 8 driven by Officer C with Sergeant A in the front seat flashed its lights at the Orion and put on its two tone horns. The police in the car were in uniform except they were not wearing hats. As they drew alongside in the outer lane, Sergeant A made eye contact with the Deceased and gestured him to pull in. The Deceased is described by Sergeant A as looking at him aggressively, slowing down and allowing Call Sign 8 to move just in front. At that stage the Deceased changed gear and accelerated away leaving Call Sign 8 and Call Sign 12 in its wake. All the policemen in both cars were convinced that this was an overwhelming sign of guilt on the part of the Deceased and that it was likely that the Orion was carrying munitions. Sergeant A had earlier noted that the Orion was working with a coal lorry and had thought that this was a likely re-supply run as they have used coal lorries before." In truth, no one had time to carry out any analysis. Sergeant A simply reacted and gave the immediate order to Officer C to go after the driver of the Orion and "to put him off the road". The policemen simply acted on gut instinct in responding to these events which had suddenly occurred without any prior warning. That instinct had been formed and honed by training and experience.

[200] The road up ahead was blocked by traffic and this allowed Call Sign 8 to catch up on the Orion and to effectively bring the Orion to a stop by ramming his front off-side off the road. This left Call Sign 8 at the front, partly on the footpath, partly on the carriageway with the Orion right behind also partly off the carriageway and partly on the carriageway. Call Sign 12 had been left behind and was approaching as the Deceased exited the Orion running at an angle in a countrywards direction across the road, hands down low and according to some of the officers looking to his right. Call Sign 12 appeared in the outside lane. It is not clear whether it was creeping or braking, but it was clearly slowing down. The front nearside door of Call Sign12 was opened by Officer C who was trying to get out and this struck the rear bumper of Call Sign 8. This provides the best indication of how confined this area was with Call Sign 12 effectively overlapping Call Sign 8. There could only have been a matter of a few feet between the front offside door of the Orion and the bonnet of Call Sign 12. It appears according to the police evidence that the Deceased in attempting to make his escape either collided with the front of Call Sign 12 or simply stopped and spun or burled round. It was at this stage that Sergeant A shot him. Officer F also had his gun at the ready and he says he cannot explain why he did not fire, and that he has endlessly contemplated what it was that prevented him from pulling the trigger.

[201] The RUC Code of Conduct (applicable at that time) for firearms states:

> "1. Use of force. The law governing the use of force is contained in Section 3(1) Criminal Law Act (NI) 1967, which states, 'A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or of persons unlawfully at large.'

There is no specific reference to police officers or to the use of firearms but it should be clearly understood that the law as stated above applies to all persons and all circumstances, including the use of firearms by police.

2. The application of the Law by the Courts.

(1) The question whether, the amount of force used to effect an arrest or prevent the commission of a crime is reasonable in the circumstances is a question of fact not of law. The test to be applied is whether the conduct fell short of the standard to be expected of the reasonable man having regard to all the circumstances of the case.

(2) The use of force by an officer is subject to ALL of the following conditions:

(a) it is necessary, ie the objective cannot be achieved in any other way; and

(b) the amount of force used will be reasonable in the circumstances;

(c) only the minimum amount of force necessary to achieve the objective will be used; and

(d) the amount of force used will be in proportion to the seriousness of the case.

(3) In cases other than self-defence, police officers should consider before resorting to the use of their firearm which of the following will result in the greater harm: the criminal escaping or the injury to the criminal.

(4) Where a firearm is used in the prevention of crime or in effecting an arrest then officers must be certain that there was no viable alternative available. Officers must at all times bear in mind the possible fatal consequences of opening fire.

(5) It must be clearly understood that any use of firearms, whether it leads to loss of life or wounding or otherwise, will be the subject of searching

investigation. Unjustified use may lead to criminal and/or disciplinary charges.

3. Circumstances for the use of firearms.

(1) Supervisory officers will decide which firearms, apart from those on personal issue, will be carried by members on duty. Firearms carried on duty must always be loaded with live rounds in accordance with weapon training directions. Firearms will only be used a last resort and then always in accordance with the instructions contained in this Section.

(2) It is impossible to catalogue the infinite number of circumstances which may arise and list those in which the resort to firearms may be justified.

(3) As a guide, it is only in exceptional circumstances that the use of a firearm against a person will meet all four conditions set out at 2(2). These exceptional circumstances include:

(a) an armed attack is in progress against any person and is endangering life; or

(b) an offender is offering armed resistance or otherwise jeopardising the lives of others;

(c) an armed attack has taken place and there is no other means to arrest the known offender.

(4) Armed means armed with a firearm, explosive device, petrol bomb or other weapon being used in a manner likely to cause death, or inflict serious injury.

(5) Specific examples of occasions where a firearm could be used after due warning include:

(a) Against a person who:

(i) is carrying what is positively identified as a firearm; and

(ii) is believed on reasonable grounds to be about to use the firearm in such a

manner as to endanger life or cause serious injury; and

(iii) has refused to stop when called upon to do so; and

(iv) cannot be stopped in any other way.

(b) Against a person throwing a petrol bomb if his action is likely to endanger life.

(c) Against a person attacking or destroying property or stealing firearms or explosives, if there is an immediate danger to life.

(d) Against a person who, though he is not at present committing an unlawful act has:

(i) in your sight killed or seriously injured another; and

(ii) not halted when called upon to do so and cannot be arrested by any other means.

(e) If there is no other way to protect yourself or others from the danger of being killed or seriously injured.

4. Warning before firing.

(1) In general a warning must be given before firing and should be as loud as possible. If necessary or practical it should be repeated. It must:

(a) make clear that it is a police officer speaking;

(b) give clear, unambiguous instructions;

(c) make it clear that fire will be opened if the instructions are obeyed.

These ingredients may be contained in a very brief warning eg "Police, stop or I will fire'.

5. You may fire without warning.

(1) When hostile firing is taking place in your area, and a warning is impracticable:

(a) against a person using a firearm in circumstances which endanger life; or

(b) against a person carrying what you can positively identify as a firearm if he is clearly about to use it in circumstances which will endanger life or cause serious injury; or

(c) at a vehicle if the occupants open fire or throw a bomb at you or those whom it is your duty to protect, or are clearly about to do so; or

(d) where a warning would increase the risk of death or serious injury to you or any other person; or

(e) you or some other person has already come under armed attack; and there is no other way to protect yourself or others from the danger of being killed or seriously injured.

6. Firearms not to be used.

(1) Firearms will not be used against:

(a) any person or vehicle if all the conditions for use of such extreme force are not met; or

(b) any person who is merely suspected of a crime; or

(c) a vehicle merely because it has failed to stop for a signal at a road check.

7. Warning shots. When a verbal warning may not be heard in time or prevailing circumstances do not permit such action, a warning shot may be fired. This shot must be aimed and fired in a safe direction.

8. Discharging firearms.

(1) When the decision to open fire, either as a warning or for effect, has been taken:

(a) only aimed shots will be fired;

(b) no more rounds than are strictly necessary in the circumstances will be fired; and

(c) all reasonable precautions will be taken to avoid injury to any person other than the target.

(2) Use of firearms by police during hours of darkness.

(a) As a result of research conducted by the Ballistics Section of the NIFSL it has been established that when a bullet from a high velocity weapon strikes the windows or bodywork of a motor vehicle, this produces a flash which resembles to a greater or lesser degree, the muzzle flash from some low velocity weapons. Furthermore, it is believed that in similar circumstances the same effect could be produced when a high velocity bullet strikes the window pane of a building.

(b) These findings are of real significance and must be borne in mind by members who on duty during darkness may have to resort to the use of firearms in accordance with the provisions of these regulations."

PSNI accept that in opening fire Sergeant A did not comply with the Code of Conduct. In this interview immediately after the incident Sergeant A did say that he was "completely satisfied" that he was complying with the Code in his use of a firearm.

[202] He subsequently accepted that he had not complied with the RUC's Code of Conduct but considered that in his defence it was written in an office and did not reflect what happened on the street. In particular it was not designed to cover the events of that particular evening. He accepted that at no time before or after he opened fire had he seen the Deceased holding a weapon. He did not apologise for the Deceased's death. He refused to accept that he had made a mistake. He considered that in the circumstances he had acted lawfully. He had used the minimum of force necessary in the circumstances given his perception as to what

was going to happen. He feared for his life and that of his colleagues. His response in all the circumstances, he considered, was proportionate.

If the Code of Conduct is followed to the letter then it provides an assurance to the Officer that he will not be in breach of Article 2. "The Code in effect requires that the use of lethal force is unavoidably necessary." (See para [66] of Court of Appeal in In the Matter of Three applications by Hugh Jordan for Judicial Review). However, the Code does not represent the law on self-defence. It does not deal with the situation where a police officer might have to make an instantaneous decision when he believes his life or that of his colleagues is at grave risk. The unfortunate truth is that in such circumstances a police officer can only make an immediate assessment because regardless of how experienced or well-trained he is, if he wants to make sure and weigh up the pros and cons either he or his fellow officers may well be dead. It is not an enviable position. Under such stress, police officers in trying to make such an assessment can make a mistake: eg see Curtis (aka Jason) Davis v Commissioner of Police of the Metropolis [2016] EWHC 38) where the police officer, who was held to have acted lawfully, opened fire having mistaken a jump lead in the hand of the injured party for the barrel of a gun. The de Menezes case provides another clear example.

[203] Sergeant A, a hugely experienced counter-terrorist officer had been involved in the planning and execution of some of the most successful anti-terrorist operations over the previous 12 years. He had deliberately not sought promotion beyond the rank of sergeant because he considered his position as sergeant to be the best way of maintaining control both in the planning and execution of operations against terrorists. He said without contradiction: "I have been in more situations of shoot/no shoot than most other officers in **any** force." (My emphasis)

[204] Sergeant A's evidence was to the effect that:

(a) He could not see the Deceased's hands because of where he was standing close to the rear windscreen and boot of Call Sign 8. At the interview of 30 March 1993 he was asked whether his view was covered by the roof of the car. His response was that he could not honestly say. He was challenged on the basis that he had re-marked the sketch map to allow him to make the case that he could not see the Deceased's hands. But of course he had already been interviewed and made it clear that he could not see the Deceased's hands at that interview. Given his answers when interviewed, I consider that the marking error is more likely to be due to lack of care. These maps which are not scaled, are often misleading. I consider that I should be very slow to draw adverse inferences from them. That is demonstrated by the divergent markings of all the witnesses, police and civilian alike, as to where, for example, Call Sign 12 actually stopped on the Falls Road. It is confirmed by my visit to the site of the shooting. The

very confined space means that the slightest change of angle or position can have an enormous affect.

(b) The hands of the Deceased remained down.

(c) He did not consider hiding behind the armoured car. Given the speed with which everything happened, this was not an option. The easy answer was that if he did do so, he would expose Officer C, the driver of Call Sign 8, to mortal injury, who he could reasonably anticipate was emerging from the driver's seat at that time. However, he did say the driver of Call Sign 8 was at risk from the Deceased because he "would have been getting out at the same time".

It was his opinion that the Deceased's refusal to halt, his aggressive turn towards the police who he must have known were armed with his arms down so that his hands could not be seen, convinced A that his life and those of his colleagues was in mortal danger. He believed that he and his colleagues were going to be shot. The inquest was told, as I have already noted that even when PIRA members were caught red-handed, they would normally put their hands up and surrender when the odds, as here, were obviously stacked against them. He said in a statement on 30 March 1993:

> "All the circumstances I have already described and my experience having arrested many experienced hard-bitten terrorists when called on to halt or surrender – the normal reaction – even when they're armed is to stand perfectly still and raise their arms and follow instructions implicitly so as to give the impression they are not a threat to you."

There was no challenge to the content of that statement.

He also said:

> "I was in fear that the man was armed, the way he had spun round so quickly. He seemed to be very, very quick. I fired a short burst of my MP5 at the man."

[205] Sergeant A was adamant that he feared "for his life". It is significant that:

(a) He never attempted to suggest that the Deceased kept on turning after he was shot, although this would have improved the history given by him and made his version of events more coherent and consistent. He did not deny however in his first interview that the Deceased may have "turned on round or had moved in some other way". He said,

"While I made the split second decision to fire the man was facing towards me but I honestly can't say whether he had turned on round or had moved in some other way."

(b) He never suggested that he saw the Deceased reaching for a gun.

(c) He was frank about the fact that he did not comply with the RUC Code of Conduct when cross-examined by Mr Macdonald QC, but had no doubt that he had acted within the law because his life (and those of his colleagues) was, he thought, endangered by the action of the Deceased.

(d) He said that if this was a training test with cardboard cut outs he would probably have failed it. But training and real life are very different. Cardboard cut outs cannot fire live ammunition.

(e) He did not suggest that he called an appropriate warning in accordance with the Code of Conduct as he could easily have done.

(f) He said he had no idea that the car that stopped in the outside lane was Call Sign 12. He said, "… at the time I just saw it as a vehicle". He would not have seen anyone getting out of that car given that its headlights were on. Any shots while in the direction of the car would have been angled across the road. Mr Macdonald QC said that the shots would have been fired in the direction of Call Sign 12 and accordingly Sergeant A's evidence makes no sense. It is a mistake to rely on the sketch maps which are not properly scaled. Each policeman places the Deceased in different position adjacent to the front of Call Sign 12. While the shots undoubtedly were in the general direction of the car (which as I have said Sergeant A did not know to be Call Sign 12) they are likely, I conclude, to have been fired at an angle across the road.

(g) He gave Dr Crowther who examined him shortly after the incident a history consistent with that given to the inquest when he could not reasonably have anticipated at that stage that the notes and records of Dr Crowther would be made available either to the next of kin or to the Coroner.

(h) Having listened carefully to the evidence of Sergeant A I do not accept the submission of Mr Macdonald QC that it is simply inconceivable that Sergeant A honestly believed he was under threat in circumstances where there was no objective threat whatsoever. If the circumstances were as described by Sergeant A then it is certainly credible given the catenation of circumstances that Sergeant A should believe that his life

and that of his colleagues, and in particular Officer C, were under mortal threat.

[206] The shooting took place at close range, from a few yards, and in a well-lit street with the Deceased in the headlights of Call Sign 12. If the version put forward by the next of kin is what actually did occur then Sergeant A must have been certain that he shot the Deceased in the back. This was not something about which he could have been in any doubt given his view and his proximity to the Deceased at the time he fired. The court is now being asked to believe that despite seeing what happened with his own eyes, he invented a version of events that had him shooting at the Deceased while he faced him. Indeed he said that he could not remember the Deceased turning after he had shot him when he was facing him. If he was being dishonest, then the easy lie would have been to say that he continued to turn as he shot. But more importantly it makes no sense whatsoever for Sergeant A to disbelieve what he saw with his own eyes and accept what can only have been a provisional and tentative diagnosis from Officers E and F who attended the Deceased after the shooting that the bullets had entered through the chest of the Deceased and exited out of the back. Diagnosing entry and exit wounds is not easy as all those present must have appreciated.

[207] It is also of some significance that this man has been involved in his career as a police officer covering hundreds of anti-terrorist operations. He has apparently made hundreds of arrests and secured hundreds of convictions. He has been responsible in part, for the seizure of tons of explosives, hundreds of guns and substantial amounts of terrorist equipment, according to the evidence presented to the inquest in support of his application for anonymity and screening. This was not challenged. He described himself, and he does not appear to be one given to boasting, as one of the most experienced counter-terrorist officers in Europe. He was not challenged on this either. Indeed, Mr Macdonald QC's questioning proceeded to a large extent on the premise that this was correct. During the whole of his career he had only ever been involved in four incidents where he had used a firearm. In addition to this incident, he supplied covering fire to allow members of a unit to move closer to effect arrests where there had been a fatal terrorist attack on an off-duty member of the security forces and the perpetrators were hiding in a house in west Belfast. The next two occasions related to the discharge of warning shots as a last resort so that he could arrest persons, the first of whom had been in possession of 1200 lbs of explosives in a van and was making good his escape through the back gardens of a west Belfast housing estate. The second involved warning shots fired over a speeding car containing a bomb made up of two beer kegs primed and ready to detonate, the loss of which would have been catastrophic. There was simply no evidence to support the case that this was a callous killer, a marksman who was prepared to shoot first and ask questions later. If it was his mission to murder PIRA members when the opportunity arose, then his record and previous actions do not support this. Mr Macdonald QC suggested to him that he was someone who believed in "speed, fire power, aggression". His record so far as this inquest can assess it, belies this claim. His previous behaviour suggests someone who acted

with restraint, not someone who considered that as a police officer he could shoot terrorists with impunity. If the case the next of kin is making is correct, the question which remained unasked and unanswered is why did Sergeant A behave in a manner which appears to be completely divorced from his previous behaviour? In fact there can be no satisfactory answer to that question. On the evidence presented to this inquest, Sergeant A appeared to have behaved with great caution prior to 25 November 1992 and certainly did not use any of the many opportunities presented by other counter-terrorism operations in which he had taken part to "take out" those whom he perceived to be terrorists.

[208] Finally, the inquest was urged to treat the evidence of Sergeant A with considerable suspicion given that he had tampered with a log in the Mullacreevie Park incident in 1982, some ten years before, to provide a false cover story. It was suggested that he was someone who had "a track record of lying when circumstances seemed to justify it". He agreed that he was prepared to lie on that occasion. It was suggested that he had nothing but contempt for the court process. However, Sergeant A's action in attending this inquest undermined that claim, especially now that he no longer lives in Northern Ireland. I note that he had said he would not attend the first inquest. He certainly did not give evidence before it was abandoned. It may be that his refusal to appear was connected with the possibility of a possible criminal prosecution. I simply do not know. In 2012 and again on this occasion he was prepared to have his actions publicly examined when the easy response would have been to lie low. He denied that the suggestion that the experience at Mullacreevie Park had taught him that the HMSU were above the law.

[209] It is important to remember that:

(a) What Sergeant A was alleged to have done in Mullacreevie Park occurred some ten years before.

(b) His actions were dictated by the instructions of his superior officers.

(c) The circumstances were very different. The PIRA was enjoying considerable terrorist success and the protection of sources was absolutely essential if peace was to be restored to the province.

However, I must recognise that while Sergeant A is someone of good character with no convictions and an unblemished record of service to the RUC, he is someone who is capable of lying when he considers the occasion demands it.

[210] From his evidence, it would appear that his big regret was that instead of firing a single shot, as he intended, he pushed the switch from safety to automatic by mistake. He demonstrated how he did this. Mr Boyce, the Firearms Expert, stated that the force required was that of flicking a light switch on and off. His evidence on this issue proved accurate when the mechanism was demonstrated at court. It was entirely understandable how, in the heat of the moment, the switch could be pushed

accidentally from safety through single shot mode to automatic. This is not the only time that this error has occurred during a highly charged engagement. I will return to this later in the judgment.

[211] Mr Macdonald QC on behalf of the next of kin attacked Sergeant A on the basis that he admitted no anxiety relating to the incident. Rather that his job satisfaction had decreased following the ceasefire. If this line of questioning was intended to persuade the court that Sergeant A was a cold hearted assassin in love with his work who considered PIRA members were legitimate targets, it failed.

Firstly, as I have said Sergeant A was unapologetic because he felt that his shooting of the Deceased was justified by the fear he felt for his life and/or that of his colleagues and that this was as a direct consequence of the actions of the Deceased.

Secondly, with the HMSU he had been involved in countless terrorist incidents. Again as I have said, his behaviour in those incidents was not of someone who was prone to discharge his firearm without necessity. It also contradicted the suggestion that Sergeant A was prepared to shoot the Deceased even though he was unarmed, simply because he was carrying out work for PIRA.

Thirdly, the medical records note that although he was quite controlled and demonstrated no emotional lability, he did display a tremor of both hands consistent with a man in shock.

Fourthly, following this incident he had to take up a job as a staff sergeant. Mr Macdonald QC probed his reaction to not being on active service. For someone who had been on active service and carrying out operational duties, it is unsurprising that the administrative duties associated with the work of a staff sergeant might well appear dull.

Fifthly, the only regret that Sergeant A expressed was directed at his failure to ensure that when he removed the safety switch, he put it into single shot rather than automatic mode. He said in evidence, "At that stage I was glad the safety went off. No matter where it stopped I just wanted the safety catch to go off." As I have said, he believed that the circumstances justified him opening fire. However as a policeman with an expertise in firearms, his failure to engage his gun into the single shot mode was a source of professional disappointment.

[212] I found Sergeant A to be taciturn. However, he appeared to be a credible witness. He was quietly impressive. He did not embellish. If anything he was understated. He was blunt. This may have led to some ambiguity. Firstly, on being asked to express regret for what had happened and the death of the Deceased, he declined to do so. My interpretation of his refusal was not that he did not regret the Deceased's death but rather he did not regret shooting the Deceased dead because the circumstances demanded it. Secondly, Mr Macdonald QC kept pressing that the reaction time did not matter because on Sergeant A's account he fired when the

Deceased was facing him. My understanding of his evidence was that Sergeant A saw the Deceased turning his head over his right shoulder. He then shouted a warning. The Deceased then spun round with Sergeant A unable to see his hands because his arms were down by his side. He then opened fire. It is difficult now 25 years later to break this down into separate isolated sequences and, also, unfair**.** Even the meaning of the term "turned to face" can be difficult to tie down. However, I will discuss this issue in rather more detail later on in this judgment when I consider the expert evidence. On the basis of his testimony, Sergeant A had an instant to react to a sudden manoeuvre of the Deceased which he concluded was the immediate prelude to the Deceased opening fire on him and his colleagues. He had no time to weigh up the pros and cons, he had to react instantaneously and instinctively relying on his training and experience to save, he claims, his life and that of his colleagues. He had to react immediately and he did so. There was no possibility of him playing it by the book if he was not to place his life and those of his colleagues at a very serious risk. Mr Macdonald QC urged that there was no objective threat. That can only be determined afterwards, when the Deceased was found not to be armed. The Deceased's behaviour, as recorded by Sergeant A, was consistent with someone intent on an armed confrontation.

[213] Officer C was the driver of Call Sign 8. He gave evidence that he believed from the actions of the driver of the Orion that the Orion was loaded with a bomb or munitions. His evidence broadly supported Sergeant A but there were two matters of significance.

Firstly, he said he could not recall hearing a shout. If Officer C was determined to lie to support Sergeant A then the easiest lie of all to make was to allege that Sergeant A had shouted a warning and that that had been ignored by the Deceased.

Secondly, although he turned away as the shots were discharged, he described seeing the Deceased's face immediately beforehand "in a flash", "facing me". He gave a gripping and convincing account of seeing the face of the Deceased immediately before the burst of gunfire.

[214] He did not appear to be lying, he made a convincing witness and he did seem to try to give an accurate recollection of what had happened nearly 25-years ago.

[215] Officer B was in the rear passenger seat of Call Sign 8. He did hear shouting but could not say what he heard. He was attempting to recover his firearm at the time the shots were fired and did not see the shooting. It was suggested to him that he was lying about this because he did not want to say he saw Sergeant A shooting a fleeing man in the back. He denied this. He seemed to give honest testimony. There was no attempt on his part to exaggerate his account in order to support Sergeant A's version of events. He offered what appeared to be reliable and convincing testimony.

[216] Officer D was in the front passenger seat and in charge of Call Sign 12. He heard shouting but no warning. He gave evidence of the Deceased turning to his right with both hands down by his right hip as he ran from the Orion. He then heard gunfire. He said he feared for his life. He described the Deceased as spinning round immediately before he was shot. He said the Deceased was shot while facing Sergeant A. But if the next of kin are right, Officer D is bound to have seen Sergeant A shoot the Deceased in the back. It makes no sense for him to invent a story of the Deceased turning round quickly simply because two of his fellow officers made a provisional assessment that the wounds in the chest were entry wounds when he had seen the shooting before his very eyes.

[217] He said he did not shoot because "I wasn't faced with what they seen". This is true because the Deceased was turning away from him and was not a threat. The statement that nothing that he "seen justified the shooting of Mr Jordan" is not the comment of a man who is intent on supporting A at all costs and thereby permitting him to avoid prosecution. He was genuinely afraid for his life but this arose from hearing the shots fired and not knowing who fired them. However, he did say that at the time he had first pressure on the trigger and despite being the longest serving HMSU officer, this was as close as he had ever come to discharging a firearm.

He said that he was not sure that Sergeant A was at the debrief and denied his version was in any way based on any narrative recounted by Sergeant A after the shooting.

I found Officer D to be a credible witness. So far as I could tell from watching him give his testimony, he tried hard to tell the truth about what happened all those years ago. I certainly did not gain the impression that he was prepared to lie in order to support Sergeant A's version of events.

[218] Officer E was the driver of Call Sign 12. He saw the Deceased spinning round in a clockwise direction immediately before he was shot. He believed he was armed. As he had his head down to retrieve his rifle he did not see the actual shooting take place. He described the Deceased's hands as being down in the area of his waistband on the right hand side. He was criticised by Mr Macdonald QC because at the 2012 inquest he had said he had seen nothing particularly sinister about where the Deceased had his hands. There was no reason why his view should have altered in the intervening four years. In 2012 what he had said was:

> "So whenever he then spun in an aggressive manner towards people that he knew to be armed, I still to this day do not understand and find it hard to reconcile that he wasn't armed because based with what I saw happening that day I was of the opinion that my life, but primarily the lives of my colleagues were in danger …"

He went on to give convincing evidence about never having perceived a greater threat to his life. I did not consider his evidence in 2012 to be inconsistent with his evidence in 2016. He clearly feared for his life, and gave evidence of that fear on both occasions. That fear was instilled by the actions of the Deceased. His testimony before me was vivid and disturbing. This ties in with the testimony of Officer D and must be seen in the context of them being serving officers in the HMSU who day and daily had to deal with terrorist led wrongdoing. He believed, according to his evidence, that the Deceased had a firearm. He was cross-examined closely and in detail. He responded well and gave convincing evidence of this being the most amount of fear he had felt in 30 years in the police and that it was the worst incident of his career.

He provided a graphic background to what had happened during the day and the circumstances under which the HMSU were operating. His evidence appeared to be truthful and was not that of someone who was prepared to support a colleague in a lying version of events come what may.

[219] Officer F was a credible witness. He described the Deceased as "burling" round with his hands low. He could not remember whether Call Sign 8 or Call Sign 12 had used flashing lights and two tone horns. Despite being involved in this incident he remained on duty until 11.00 am the next day. He told the inquest that he believed that they were in imminent danger because of what had happened in the build-up. He did not see the Deceased look back, contradicting Sergeant A. He said that he was unable to answer why he did not open fire. He thought the Deceased was a threat and he was also on the cusp of firing. He was in a state of readiness with his finger on the trigger, poised to fire. He admitted to being under severe pressure and feeling under threat. He thought that when he examined the Deceased afterwards that the wound was to the front, but if the next of kin are right, he saw the Deceased before his eyes shot in the back. He gave evidence that he was someone who would not know how to differentiate between an entry or exit wound. He was effectively guessing. There was some debate about whether he had told Sergeant A that the Deceased had been shot in the front. He also accepted that a VCP could have been set up. He described the whole incident as happening in the blink of an eye. I found him to be a plausible witness who attested to the "real and imminent threat" posed by the Deceased.

[220] However, Mr Macdonald QC in a very effective cross-examination suggested to Officer F that he had tried to mislead the jury at the last inquest. He had mis-diagnosed the wound on the Deceased's chest as an entry wound and in order to explain it he had invented a story of the Deceased burling round to face Call Sign 8 and Sergeant A. Giving evidence of the Deceased burling round he had told the jury that he did not know "at that stage" that the Deceased had been shot in the front. Mr Macdonald QC invited me to conclude that the evidence of Office F was untruthful not on some peripheral issue but on a key matter. Initially, I could see force in the point which was being made. However, on reading the transcript of the 2012 inquest the use of "at that stage" seems in the context to refer to the time of the

shooting. Accordingly, on reflection I consider that my initial good impression of Officer F's testimony should stand.

[221] Mr Macdonald QC stressed that none of the police officers searched the Deceased for weapons, thereby confirming that none of them genuinely thought that he was armed. But that is not what happened. Officer D did search the Deceased. In the statement he made on 8 December 1992 he described first searching "his upper body area" and then "searching his lower body area". He then moved away to permit first aid to be administered.

[222] The inquest was asked to believe that all the police officers had got together and made up a version of events designed to exculpate Sergeant A. I am not satisfied that this was the case. There were too many loose ends; too many easy answers not given. The differences and similarities in the testimonies of the police officers had the ring of truth. There is force in the comment of the PSNI's legal team that if there was a "conspiracy to give a uniform corroborative account that it was an abject failure". Of course this killing happened in a flash. It occurred 25 years ago. The police officers may partly be remembering what they said in their statements or in the original inquest or in the inquest held in 2012. While I acknowledge that it is very difficult for this inquest to accurately assess the veracity of these officers at this far remove individually, I was impressed with their testimonies. I found their evidence in respect of what happened that evening to be persuasive in the face of testing cross-examination from the next of kin's counsel.

[223] I also note that all the officers deny being told that DP2, a PIRA activist may have been driving the Orion. This information was known to D/Inspector AA and it should have been passed on to Officers M and Q. I am satisfied from watching the officers' reaction when they were re-called and this was put to them that this information as to the identity of DP2 had probably not been conveyed to them on the day of the shooting. It was an important omission. If the officers had known that DP2 might have been driving the Orion, then this would have provided them with cogent support for their fear in general and Sergeant A's fear in particular for his life as the Deceased turned round dynamically towards him. It is difficult to understand why the officers of Call Signs 8 and 12 would deny receiving this information if, as is alleged, they are all in cahoots because of the support it gives Sergeant A and his fear for his life and those of his colleagues. Ironically, if the driver of the Orion had been DP2, a hardened terrorist, then, it seems more likely that he, instead of panicking like the Deceased, would have pulled over and permitted Sergeant A to examine the defective rear lights of the Orion. He would certainly not have fled from the Orion and turned suddenly with his hands down low to confront Sergeant A.

[224] The denial by all the witnesses that they knew anything about the killing being reported subsequently in the press as a mix up I find harder to accept as I have recorded earlier in this judgment. The claim by all of them that they knew nothing of the claim that this was a bungled operation did give me food for thought and caused me to pause. This is a matter that needs to be weighed in the balance when I

assess their credibility. I believe it is only natural that they would have taken steps to see how the killing was reported in the press. No one officer saw any report in any newspaper. It is unlikely that they would have forgotten a claim being made at the time, namely that this was a botched operation, although after 25 years this cannot be ruled out entirely. The possible explanation may be that the long hours they were working prevented them from keeping in touch with the news as this story unfolded. However, I remain unconvinced that all of the officers were unaware at the time as to how this killing was being reported in the media. I did not find this part of their evidence convincing. I do not know how many or which of the officers are trying to mislead me. I also have difficulty in accepting that the police officers involved in the shooting did not discuss what happened in some detail whether in the police car or back at the station. These are matters that need to be weighed in the balance.

[225] In the immediate aftermath Call Sign 12 was moved on the orders of Officer H who had arrived at the scene. Officer D did not think that this was a good idea but was overruled by H because he said that he needed to clear a traffic blockage. There was no doubt that traffic was backed up in both directions down the Falls Road given that the shooting happened during the rush hour. There is no doubt that it would have been better to have left Call Sign 12 in situ so that it could form part of the CSI. The movement of this vehicle before SOCO arrived and without it being accurately mapped on a sketch map has led to all sorts of difficulties. Different witnesses have placed Call Sign 12 in different locations. Its removal has been the cause of suspicion. I discount the suggestion that it was part of a cover-up but I accept that it would have been infinitely preferable if it had been left in place.

[226] Similarly the decision of the police to allow a bus full of passengers making their way home who had stopped at the scene of the killing without questioning them as to whether or not they witnessed the killing and/or taking their names and addresses, was not consistent with a well-managed investigation. There were other drivers stopped in the vicinity and none of them were questioned as to whether or not they saw what happened. Nor do I understand that their names and addresses were taken. I accept that there was significant publicity after the incident. Police did advertise for witnesses to come forward. It does not appear that any passenger from the bus or the bus driver attended to help with the enquiries which were on-going into the death of the Deceased. It may be because no one saw anything that was relevant. However good practice required the bus to remain where it was until the police had taken the names of all the passengers and the bus driver. This also applied to any car drivers and their passengers who were stopped close to the killing. The failure to take these elementary precautions has to some degree undermined the integrity of the investigation. I accept that subsequently the police did make considerable efforts to track down relevant witnesses, but that was a response that smacks of too little, too late.

[227] Soldier X was some 50 to 60 yards back, his view ahead obscured by a black taxi. He saw a man running across the countrywards carriageway. He took his eyes

off what was happening ahead. He heard what he thought was a shot. He looked up and could see the man half on and half off the pavement on the other side of the road. He heard no siren. He heard no shouts of warning. This evidence does not tie in with the police evidence. There was never a single shot. There was a burst of automatic gunfire. It is difficult to reconcile this account with that of the police officers. It seems likely that what he saw was what happened after the shooting had taken place, although this is unexplained and that is why he only heard a single shot. He certainly did not see any police officers kicking or punching the Deceased on the ground.

(ii) The Civilian Evidence

[228] The events of 25 November 1992 were witnessed by a number of civilians who have given evidence at the various inquests held in 1995, 2012 and 2016. They have also made statements. It is likely that there are other civilians who witnessed what happened on this night but who have chosen not to come forward, to give statements and appear at the inquests into the death of the Deceased. They have chosen to pass by on the other side of the road.

[229] Hugh Malone, Ciaran McNally, Gary Brown and Gerard McKeown, were all work colleagues who had seen Call Signs 8 and 12 emerge from Andersonstown Police Station and stop just before the roundabout just after 5 o'clock when they had clocked out of work. This evidence undermines to some degree the suggestion that setting up a VCP would have put the "dickers" at Arizona Street on alert and compromised any search of the Arizona Street premises. If, the four workers on their way home from work could see from the police presence that something was up, then surely so could the dickers.

[230] The four workmen were walking citywards on the right hand side of the Falls Road. As they reached the railings of the Parish Priest's house just up from St John's, and when traffic was starting to build up on the Falls Road in a citywards direction, their attention was drawn to the collision between Call Sign 8 and the Orion driven by the Deceased. They looked across the road and watched the police car ram the Orion onto the footpath. They then saw the Deceased run from the Orion, they saw him shot, they saw him collapse and they saw the police attending to him.

[231] The evidence of Mr Malone was that all three cars that is Call Sign 8, the Orion and Call Sign 12 came to a halt at about the same time. Prior to that there had been no sirens sounding or lights flashing. The Deceased immediately ran countrywards from his car, seemed to stagger, change direction quickly and started to run across the road. He had reached the centre white line when a policeman fired from the seat behind the driver of the dark coloured car, that is Call Sign 12, and would have been Officer F. The Deceased staggered to the footpath, turned round to the police holding his left arm. He was bundled to the ground by four policemen, placed face down, who shouted abuse at him. He was forcibly searched but nothing

was found either on him or in the Orion which had also been searched. There was no warning shout before the shots were fired. Malone ran to the priest's house following the request by one of the officers to get the priest and when he returned two soldiers were giving the dying man the kiss of life. When he gave his oral testimony at the first inquest he gave sworn testimony for the first time (and this was not contained in the statement he had previously made to the police in the presence of his solicitor) that the Deceased was viciously kicked (and punched) by the police before he died.

[232] There were a number of problems with his testimony. Firstly, as I have noted, Mr Malone made no mention of any policeman kicking or punching the Deceased in his original statement to the police which he made when his solicitor was present. Secondly the police officer who fired the gun was not Officer F from Call Sign 12 but Sergeant A from Call Sign 8, the first car. Mr Malone was absolutely adamant that the officer who fired the shots emerged from the second police car. He dismissed the cartridges on the footpath as being part of a police cover-up and said that this was why Call Sign 12 left the scene before SOCO arrived.

[233] His evidence was not reliable. His explanation for omitting any reference to the police kicking or punching the Deceased as he lay face down and after they had bundled him to the ground in the original police statement is wholly unconvincing. Further Mr Malone had convictions for membership of the IRA and for possessing firearms for which he had served a period of imprisonment. He told the inquest in 2012 that he was proud to be a member of the IRA and had no regrets and "anything I done I was proud of it". His evidence as to who fired the shots was completely wrong because there is overwhelming evidence that Sergeant A fired his own gun from the pavement. Despite Mr Malone's claim "like every shoot to kill there has to be a cover-up", there was no evidence at all that the cartridges were moved from the road and placed on the footpath. This would have had to happen, if he was right, in the full view of many onlookers. Leaving aside all the problems of relying on the evidence of an eyewitness 25 years after the event, I have no confidence when considering his oral testimony before me and the other versions he has given over the preceding 25 years, that what the inquest was being told was accurate and reliable. His own Republican sympathies and his antipathy to the police may have been responsible for the obvious embellishments and prevarications on his part. There is no need for this inquest to speculate as to the cause, only to record that the Court did not feel that it could place any weight upon his testimony.

[234] Ciaran McNally was another member of the group of four workmates. He had given evidence at the original inquest in 1995. He then suffered serious personal injuries in a road traffic accident. Despite these he gave evidence in the 2012 inquest. By 2016 it was obvious that his health was such that he was not going to be able to add any material evidence to what had already been adduced in evidence in 2012. He had also seen Call Signs 8 and 12 parked up before the incident as they made their way citywards. He heard no sirens, he saw no lights, he heard no brakes or the sound of skidding. He did hear the crash between Call Sign 8 and the Orion. He

saw the Deceased emerge. He took one step and saw his path was blocked by Call Sign 12. He then ran to the centre of the road. He heard rapid fire and the driver of the Orion ran past the centre white line. On his account, the police officer who fired the shots must have been Officer F because McNally described him as standing on the road between the front door and the back door of Call Sign 12, that is the back car. McNally said, "I think he turned to face the police at an instance either before he was shot or after he was shot but certainly at the time". He went on to say, "I looked back at him he was facing the police and holding his left forearm with his right hand". He said in his original statement that the Deceased had been kicked by two police officers in the chest and side before he was searched. He was certain there were no warning shouts before the police officer opened fire.

[235] I did not find his testimony reliable for the following reasons. He was certain that the police officer who fired the shots did so from beside the second police car, which was not the case. He said that the Deceased had been kicked aggressively by the police. He said that "there were boots and fists flying in". He described the Deceased as being kicked "in the chest area". However there is no mention of any punching in his original statement to the police. Significantly there were no bruises on the Deceased's chest or other marks to substantiate or corroborate these claims that the Deceased had been subject to an assault before he died. He was also convinced that there had been a cover-up and that the gunman had been driven off in a dark car. As I have said, he was not fit to give evidence because of his serious personal injuries. He confirmed his previous testimony and only gave the briefest of evidence. I had to consider his original statement and the transcripts of evidence from the two previous inquests. His oral evidence before me was of little value. Given the inconsistencies and contradictions in the totality of his evidence, which may at least in part be attributed to the serious injuries which he had previously sustained, I did not consider that he gave a testimony upon which the inquest could place reliance and that includes his evidence about the Deceased turning before he was shot.

[236] Gary Brown was the third member of the group. He describes the Deceased as having been shot after he turned to face them on the opposite footpath having been facing in the direction of Andersonstown Barracks. The four members of the group were standing on the footpath opposite to where the Orion had stopped. He was convinced that the Deceased was shot by the officer from the back car, Call Sign 12, and that the car was driven off. His testimony was unconvincing for a number of reasons:

(i) He was certain that the officer who had fired the shots had done so from the off-side of Call Sign 12. However there was no mention in his original statement that he saw anyone holding or firing a gun, never mind firing from a location from which the evidence strongly suggests no shots were fired.

(ii) He claimed in his original statement that the Deceased having been brought to the ground was kicked by two officers to his chest. As already noted his

evidence on that issue was not supported by any objective evidence from the post mortem examination. But in answering questions as to how this had occurred, his replies were inconsistent and confusing. In 1995 he told the Coroner when the inconsistencies were drawn to his attention that if "I described wrong then, it's described wrong". The totality of his evidence of these assaults, whether they were kicks to the chest or knees to the chest, whether on the ground, or on the way down, was unconvincing, contradictory and inconsistent. In general I did not find his testimony credible or convincing.

[237] The fourth member of the group was Patrick McKeown. He says that Call Sign 12 ran into the Orion causing the Orion's boot to pop open. The evidence from the engineers is that this is unlikely to have occurred. McKeown says the Deceased ran to his left but before he reached the front he turned right and ran across the road. There were no sirens sounding or shouts of warning before the shots. He was shot half way across the road by the police officer who came out of Call Sign 12. He was bundled to the ground and kicked.

[238] There is some difficulty with this testimony. Firstly he has the Deceased running citywards initially. He said to the Coroner in 1995 that he "did not see him at any stage run back towards the police car". He then changed that and said that he turned right when it was pointed out by the Coroner that if he had turned left this would have caused him to run into the car door. He is in no doubt that the Deceased was shot by the policeman who emerged from Call Sign 12, the second police car and who was standing in the middle of the road. He was emphatic that Sergeant A could not have fired the shots. He asserted that two of the police officers "stuck the boot in" after the Deceased had fallen. As I have said there is no objective corroborating evidence by way of bruising and this evidence is contradicted by other eyewitnesses. He did not give evidence before me. His evidence as appears from his statement and the 1995 transcript of the inquest was unconvincing, inconsistent and confusing.

[239] The four workmates admit discussing what had happened afterwards. They went to hospital together. They attended the Committee for the Administration of Justice to make statements. They all attended the same solicitor. I do not need to speculate whether their evidence was tainted by the discussions they are almost certain to have had amongst themselves or others. The fact is that their testimonies provide little assistance to me in trying to resolve what happened at teatime on the Falls Road on 25 November 1992.

[240] Lawrence Moylan was a taxi driver who was driving a fare on the Falls Road directly behind Call Sign 8 and Call Sign 12 immediately before the chase began. He witnessed the cars take off and described the collision between Call Sign 8 and the Orion. He claimed to have a good view some 20 feet and a car length back from the Orion. He heard no sirens and saw no flashing lights. He heard no shouts before the police opened fire. He saw the Deceased run from the Orion. He saw him run

across the road. He saw a policeman get out of the police car behind the Orion, that is Call Sign 12, rest his elbow on the boot and aim at the Deceased. He heard two shots close together. The Deceased seemed to shrug his shoulders and then turn to face the police. He put his left hand up fully extended. He then heard a further single shot and saw a flame come from the officer's gun. The Deceased fell to the footpath and the driver of Call Sign 12 (the dark car) ran across the road. He then tugged his sweatshirt in order Moylan believed to see how badly he had been injured. He heard the policeman shout "there's entry and exit wounds". Other police officers who had searched the Orion stated that they had not been able to find anything. Mr Moylan made a statement reluctantly to the police after being urged to do so by his boss.

[241] Mr Moylan gave evidence to the original inquest. He did not give testimony at the 2012 inquest or the present one. It is interesting to note that he witnessed no assault of the Deceased by any of the police officers whether by kicking or punching as variously described by the four workmates. Nor does he suggest that police officers verbally abused the Deceased. But his evidence is unreliable for a number of reasons:

(i) There was a burst of automatic gunfire. Then he heard a single shot and saw the Deceased fall. The evidence does not support the claim that at any stage there was a single shot.

(ii) The police officer firing the gun did not come from the rear car and could not have rested his elbow on the boot. The person who fired the gun was Sergeant A and he did so from the footpath holding his gun against his chest, I so find.

(iii) He had Call Sign 12 in the position in front of the red Orion and Call Sign 8 positioned behind the red Orion. In other words he had the police cars in the wrong order.

[242] James Patrick McAllister had gone from the Royal Victoria Hospital to McKenzie's Chemists on the Falls Road at about 5 o'clock. He had decided to walk up the Falls Road to the next bus stop at Andersonstown Police Station to get the bus home to Twinbrook. As he walked up the left-hand side of the Falls Road in a countrywards direction he was 8-10 yards short of the steps when he looked to see a man running across the road some 30-40 yards ahead of him. This man had almost reached the opposite kerb when he heard "automatic gunfire, about 4 shots. The man just dropped to the ground." He could not see who fired. He then saw a policeman run over and lift his clothes, which he thought subsequently might have been to allow him to give the Deceased medical assistance. McAllister has the gunfire commencing as the Deceased almost reaches the far side of the road. He heard no shouts preceding the gunfire. He did not go to the Committee for the Administration of Justice or to a solicitor. Instead he tried to block out these awful events from his mind. He is certain that the Deceased was not assaulted, bundled to

the ground, kicked or punched. He could not see where the shots came from. His view was blocked. He gave his statement to the police and he gave evidence at the first inquest in 1995. He did not give evidence at the inquest in 2012 or the present one. The risk of his evidence being contaminated by others does not arise as he does not appear to have discussed what happened with anyone else. Unfortunately, I have not had a chance to see him give oral testimony and be cross questioned. He certainly did not see any dynamic turn immediately before the burst of automatic gunfire rang out. His evidence deserves to be given proper and due consideration although it was not tested before this inquest.

[243] As I have noted neither Mr Moylan nor Mr McAllister gave oral testimony at either the 2012 or 2016 inquests. The absence of Mr McAllister was a serious omission. The reason these important voices could not be heard, is almost certainly down to the gross and inordinate delay that has occurred to date.

(iii) Expert Evidence

[244] The post mortem was conducted by Dr Press on 26 November 1992 at 11.00 am. The cause of death was recorded as "bullet wound of chest". The opinion was as follows:

> "He had been struck by three bullets. One had entered the back of the left shoulder and had passed forwards to the right at an angle of about 45 degrees and slightly downwards through the upper end of the left arm bone before making its exit on the front of the left upper chest.
>
> Another bullet had entered the left side of the back and had passed forwards to the right at an angle of about 45 degrees and upwards at an angle of about 15 degrees. In its course it grazed the ninth left rib and lacerated the lower part of the left lung, the aorta, the heart, the heart sac and the right lung before fracturing the fifth right rib and making its exit on the right side of the front of the chest. The injuries caused by this bullet would have caused his rapid death.
>
> A third bullet had entered the back of the left arm and had passed forwards fracturing the lower end of the arm bone and making it exit on the front of the forearm.
>
> The injuries were of a type caused by bullets of low velocity.

> He had been struck by three bullets which had come from behind and to his left. There was nothing to indicate the range at which they had been fired."

[245] Dr Press also issued a follow up report dated 25th January, commenting as follows on statements made by Mr Lawrence Moylan:

> "These are not consistent with my findings as Mr Moylan says that the deceased was standing with his arms upraised when the final bullet was fired. This is not possible as the fatal bullet, which caused severe laceration of the heart and the aorta, the largest artery in the body, would have caused immediate collapse and had come from behind and to the left of the deceased. It could not, therefore, have been the final bullet fired. As it would have caused immediate collapse, it follows that Mr Jordan would have been unable to turn, walk backwards and raise his arms before the fatal shot was fired. For these reasons it seems to me that Mr Moylan's recollection of the events is mistaken."

[246] Professor Crane was invited to attend the inquest in 2012 to comment on the post mortem findings. He had been provided with the contemporaneous notes made at the time of the post mortem examination and the post mortem photographs. He first gave evidence on Monday 8 October 2012. He confirmed to the Coroner that the second bullet referred to in Dr Press's report caused the fatal wound and that the other two wounds would have been treatable. He said that one could not, simply by looking at the wounds, assess the order in which the bullets were fired or struck the Deceased, although the ballistic experts later opined that either of the two lower wounds could have been the initial one as they were at similar heights. When asked by the Coroner about the position of Mr Jordan when he was struck, he commented:

> "A. … [C]ertainly the appearance of the wounds would be consistent with Mr Jordan having been upright, either standing or walking or running possibly. And from the direction of the wounds to the trunk we can say that when those wounds were sustained the shooter had to be towards his back."

[247] He indicated that the person who fired the shots would have been positioned behind the left shoulder of the Deceased, adding:

> "A. … Now again in saying that, one has to be careful because of movements of the body, in other words I could be facing and turn but nevertheless because of the direction through the body it would still indicate that the firing had come from behind his left shoulder area."

[248] When asked about whether the wounds could indicate whether the Deceased was moving or stationary at the time, Professor Crane cautioned against drawing too many inferences simply from the direction of the wounds through the body.

[249] The one aspect of Dr Press' findings that Professor Crane did not fully endorse concerned the effect of the fatal wound. Professor Crane agreed that the Deceased would have collapsed quite quickly after sustaining the wound, but it would not necessarily have been an "instantaneous collapse". He also noted that, regarding either the wound to the arm or to the shoulder, it would have been impossible for Mr Jordan to have raised his arm after those injuries had been sustained.

[250] When asked by Mr Macdonald QC on behalf of the next of kin whether there was any way Mr Jordan could have been facing the shooter when the shots were fired, Professor Crane replied:

> "A. Not when he sustained those injuries, no. He could have been facing initially and turned round, but his back would have had to be presented to the shooter for those wounds to have been sustained."

[251] Mr Montague QC on behalf of PSNI then asked:

> "Q. Just on the last point, Professor Crane, you already demonstrated very helpfully, if I may suggest so to the jury, that the deceased could well have been turning towards the shooter and then was turning away from him when he actually received the wounds?
>
> A. Yes, that's possible, yes."

[252] Professor Crane gave further evidence on 22 October 2012 about whether there was a body of research on how quickly a person could turn. He indicated that, having reviewed the literature, he could find no scientific evidence that could state precisely the turning time for individuals. While one could conduct an experiment and measure a person's turning time, there were so many variables at play that it was impossible to say precisely how quickly any one individual would turn. He

confirmed that if a person was running and undertook a turn, the speed at which the turn could occur would be increased by reason of the momentum that had already been built up.

[253] As to whether the momentum of the body would be affected by "through and through" wounds of the kind sustained by Mr Jordan, Professor Crane commented that the fatal wound would have caused Mr Jordan to collapse, but not necessarily immediately; he could have continued running, but would have collapsed fairly quickly, probably within seconds. If the person was turning or spinning, there was nothing to preclude the person from continuing to turn or spin. He confirmed again that from the pathology alone it was not possible to say which wound had been sustained first.

[254] He was asked by the Coroner about the reaction time of a person trained in the use of firearms before discharging a weapon in the face of a perceived threat, but he declined to comment and stated that he did not regard that as a pathology issue.

[255] He was asked by Mr Montague, having regard to his evidence that there was nothing to prevent the individual from continuing to turn or spin, whether there was nothing to preclude the individual from changing direction and going straight across the road. He agreed with that proposition, but noted that it was less likely that Mr Jordan would have been capable of making the voluntary decision to change direction at that stage. He agreed that the clasping of the wrist would suggest that Mr Jordan was capable of making a voluntary movement at that point. More generally, he agreed that it was impossible to be certain about the movement of a body or momentum affecting the body after being shot.

[256] Mr Macdonald questioned Professor Crane with reference to the ballistics evidence concerning the speed of the bullets and the evidence of Sergeant A that Mr Jordan was facing him when the bullets were fired. Specifically, Mr Macdonald asked:

> "Q. Does it seem likely to you, Professor Crane, that a person could spin so fast as to present his back to the shooter when at the moment the trigger was pulled he was presenting his front to the shooter at a distance of six yards?
>
> A. As I indicated to you, there isn't any scientific basis to determine how quickly a person can turn. It is impossible to say whether Mr Jordan would have had time to spin or turn so that his back was presented to the shooter, I just can't say, Mr Macdonald.
>
> Q. Does it seem likely to you?

A. Well it certainly is very rapid indeed. I don't think that I – I would simply be speculating if I said that.

Q. Well you have been invited to comment on how quickly a person can turn.

A. Yes.

Q. Do you think it is likely that a person could turn so fast, any person could turn so fast?

A. It certainly seems that it is very rapid, I agree with you.

Q. When you say you agree with me, I mean it doesn't seem likely?

A. To me, for an individual to turn in that split second. I have no scientific basis, but it does seem to me that would be very rapid indeed.

Q. You say 'very rapid indeed'. What do you mean, does it seem likely, is it realistic?"

[257] The Coroner then intervened and Mr Montague QC objected to the final question. Following an exchange about the appropriateness of the question and some further questioning, Professor Crane declined to comment on the 'likelihood' of the posited scenario. He commented:

> "It would mean, if this is the time span, what I am saying is it would require Mr Jordan to turn very rapidly indeed. Unfortunately I can't give a specific time, it may be that it is a matter that, with respect, perhaps the jury need to consider. Certainly the point that I am making is that to turn in that time would require a very rapid turn indeed."

[258] Mr Macdonald went on to ask further questions on the issue of turning speed, including reference to the ice skating analogy. Professor Crane agreed with the proposition that if a person is shot when spinning, it is more likely that they will carry on spinning after being shot. He reiterated his earlier point that there would not be an immediate collapse.

[259] The above exchange was the genesis of the more extensive pathology evidence that was available to the inquest in 2016. On the instruction of the next of

kin, Dr Cary produced a report dated 18 January 2016. In response to this the PSNI instructed Professor Pounder who reported on 5 February 2016. I determined that both would be called as witnesses in the inquest. Counsel for the next of kin now challenge whether Professor Pounder has the necessary expertise to comment on this issue. However, his evidence was a direct response to the conclusion of Dr Cary who claimed to have considered both the pathology and circumstantial evidence. In fact Dr Cary had not. He had only been given limited information about the circumstances and had certainly not seen or considered, for example, the evidence of the other police witnesses, other than Sergeant A.

[260] Dr Cary concluded in his report:

> "In my opinion when the pathological evidence is considered together with the circumstantial evidence the proposal that the deceased was initially facing Officer A when he fired but that he had sufficient time to spin around and present his back is simply not possible."

[261] Professor Pounder disagreed (emphasis as in original):

> "Taking into consideration the reaction time of Sgt A in response to an observed spin turn by Mr Jordan and the speed at which a clockwise ipsilateral pivot turn could be achieved by Mr Jordan, **I consider that the scenario set out above** [referring to the evidence of Sergeant A and Officer F] **is a plausible explanation for the location and trajectory of the gunshot wounds to Mr Jordan**."

[262] Professor Crane, having regard to the apparent difference of opinion as to the feasibility of Mr Jordan being able to turn sufficiently quickly to account for the bullet wounds to the back, agreed to facilitate a meeting of the pathologists to reach a consensus view, if possible, and to prepare an agreed statement for the Coroner. The three experts conducted a Skype video conference on 4 March 2016 and met at the State Pathologist's Department on 7 March 2016. They produced a document titled "Note of Meeting(s) of Medical Experts" to the Court on 8 March 2016.

[263] The salient points are as follows. There was general agreement with the description and interpretation of the bullet wounds in the initial autopsy report prepared by Dr Press. Regarding the direction of fire, the note recorded:

> "In respect of paragraph 3 [of Dr Cary's report], Professor Pounder agreed that 2 of the 3 shots which struck Mr Jordan, i.e. those to the back of the trunk, hit the deceased from behind or, as stated by

> Professor Crane, with the back of the deceased presented to the shooter. Professor Pounder was of the opinion that whilst the entrance wound to the back of the left elbow was consistent with the shots being directed from behind, this could not be stated with certainty in view of the potential for rotation of the arm by up to 180° and it is possible that the elbow shot came from the side. Dr Cary accepted this proposition if the elbow shot was taken 'in isolation'."

[264] The experts considered the figure quoted by Mr Boyce concerning trigger pull time. They felt that the figure of 0.06 seconds (quoted from Bumgarner), as opposed to 0.01 seconds, was more likely. Dr Cary stated that this did not affect his opinion.

[265] The final paragraph of the note reads:

> "The two experts, Dr Cary (NC) and Professor Pounder (DP) discussed possible scenarios in the context of the evidence of witnesses. The experts agreed with the general principles enunciated by Di Maio in the section of his book headed Reaction – Response Times in Handgun Shootings. It should be noted however that NC had not been present at the inquest when the evidence from the witnesses was received. Professor Pounder was however present in court when some of this evidence was adduced. In view of this the experts agreed that – dependent on specific scenarios presented will be our opinion whether the deceased could have spun or turned so that he could have sustained the gunshot wounds to the back." (sic)

[266] The passage from Di Maio, *Gunshot Wounds: Practical Aspects of Firearms, Ballistics, and Forensic Techniques* (2nd Ed, 1999) to which reference is made is as follows:

> "Sooner or later a medical examiner will become involved in a shooting where an individual claims to have shot at another individual facing them but, at autopsy, the gunshot wound is found to be in the side or back. The question then arises as to whether the victim, on seeing the gun pointed towards them, or reacting to another outside stimulus, would have had sufficient time to turn 90 to 180 degrees in the time from when the shooter initiated the shooting process

> and the bullet hit. Cases such as this often involve police shootings.
>
> Tobin and Fackler measured the minimum time needed for police Officers to fire, on signal, a drawn handgun, pointed at a target. The tests were performed with both the trigger finger on the trigger as well as outside the trigger guard (the recommended way by many police agencies to hold a gun). The mean time from signal to firing the handgun was 0.365 seconds with the finger on the trigger and 0.677 seconds with the trigger finger outside the trigger guard. Volunteers were then videotaped as they turned their torsos 180 degrees as rapidly as possible. The mean time to turn the torso 90 degrees was 0.310 seconds while to turn 180 degrees it was 0.676 seconds. Thus, Tobin and Fackler concluded that if an individual was facing a shooter, it was possible for the individual to turn their torso and end up facing away from the shooter in the time from when the shooter decides to fire and the gun discharges."

[267] At the 2016 inquest, Professor Crane was first called on 8 March to address the report on autopsy. He was content to adopt his answers in 2012 for the purpose of the present proceedings. He restated his view that the fatal wound would have been rapidly fatal but not immediately fatal and that persons sustaining wounds of this kind can be capable of some purposeful movement before collapsing.

[268] Questioned by Mr Montague, he accepted that it would have been very difficult to raise the arm above the head after the wound to the shoulder area had been sustained. Regarding the wound to the left arm, he was asked to reconsider his opinion concerning Dr Press's supplementary report (see above). It was put to him that Dr Press was probably correct; he replied that it depended on the order in which the shots had been sustained.

[269] In response to my questioning he confirmed that a low velocity bullet was consistent with a bullet travelling at 1,250 feet per second. He also confirmed that the only bruising on Mr Jordan's body was a fading bruise to the shin that would have been a few days old. The post mortem did not lend any support to the evidence of civilian witnesses that Mr Jordan had been kicked immediately before or just after his death.

[270] Professor Pounder gave evidence on 8 March 2016. In addition to Di Maio, he referred to a study by Bumgarner et al, "An Examination of Police Officer Mental Chronometry: I Swear … I Don't Know How I Shot Him in the Back". One of the

experiments described in the paper (on "simple decision-making") produced a range of reaction times (not including the actual trigger pull) from 0.44 seconds to 0.69 seconds within one standard deviation (68% of the officers). He said that the experiment demonstrated the broad range of reaction times for trained police officers and that this could then be compared with the speed at which someone might turn. I note that fair criticism was made of one of Mr Bumgarner's co-contributors, Mr Lewinski, as being compromised as an independent expert.

[271] Professor Pounder had prepared a clock diagram to illustrate the direction of Sergeant A relative to Mr Jordan at the time of the incident, the point at which Sergeant A could have perceived that Mr Jordan was turning towards him and the position of Mr Jordan at the point of impact of the bullets to his back. He related the diagram to Sergeant A's account in order to demonstrate the possible phase of rotation of the body during which Mr Jordan would have been "facing" Sergeant A. He considered the analogy of the ice skater in Dr Cary's report and suggested that the spin of the ice skater was not of scientific value to the issues before the Court:

> "A. An ice skater turns like a statue, in other words maintaining the same body position, whereas the biomechanics of the human turning in this pivot turn allows for a variable twisting of the torso."

[272] Professor Pounder went on to calculate reaction time, beginning with Sergeant A's perception of the turn, the trigger pull time and firing time and correlated that information to (a) Sergeant A's account that Mr Jordan was facing him at the point of firing and (b) the fact that the bullets entered Mr Jordan's back. He observed:

> "A. Well, using averages or conservative figures for both speed of turning by Mr Jordan and the reaction time of Sergeant A, together with the trigger pull time and then the known mechanical times for the weapon discharging five rounds and comparing the two sets of figures it is, in my view, possible that Sergeant A perceived the threat when Mr Jordan was in the 4.30 position [referring to the clock diagram] and Mr Jordan was able to achieve the 11.30 to 12.30 position before the shot struck him."

[273] Professor Pounder also placed reliance on references in Officer F's statement and evidence to Mr Jordan burling around clockwise and in a continuous movement. He observed that on the evidence of F "the gunfire was discharged during and within a continuous turn by Mr Jordan".

[274] The primary challenge to Professor Pounder's evidence was based on the proposition that, given Sergeant A's account that the Deceased was facing him at all

material times, concepts such as perception time and reaction time can be removed from the equation. If Sergeant A's account was that the Deceased was facing him when he pulled the trigger, the key issue - it was argued on behalf of the next of kin - was the length of time it took the bullet to travel from the muzzle of the gun to the body of Mr Jordan. Having regard to the ballistics evidence on the velocity of the bullets, it was suggested, the proposition that Mr Jordan was facing Sergeant A at the time he fired was entirely undermined.

[275] Professor Pounder disagreed with this line of argument. There was a detailed exchange on the matter, but the respective positions are perhaps best illustrated by the following passage:

> "Q. Right. If, according to Sergeant A, the deceased is facing him, not just at the time he perceives the threat or thinks about what he is going to do about it or decides to pull the trigger, but after the trigger is pulled and after the bullet leaves the rifle, but the bullets actually enter the deceased's back, that suggests a turn of about 180 degrees after the bullet has left the rifle; do you follow that?
>
> A. I follow it but I don't agree with it because you are taking facing someone to mean full face on and I have already demonstrated to the Court how it is possible to stand side on and be effectively facing someone by twisting the torso, so the lay term 'facing me' is a lay term --
>
> Q. Yes?
>
> A. -- which the Court has to determine what it means in the context, it is not a technical term. And I have demonstrated using the clock how at the time the trigger was pulled Mr Jordan would be facing on the clock the 9.30 position, which is 45 degree angle from full facing on Sergeant A. And I think that probably most people would say that if they were looking at someone who was at an angle of 45 degrees to them they were facing them.
>
> Q. As a pathologist, knowing the wounds that were caused here, and knowing the speed at which a bullet can travel the distance from a muzzle of a rifle 5 yards to the deceased, would you seriously suggest it is likely that the deceased was facing Sergeant A whenever those bullets emerged from the muzzle of

the rifle?

A. All I can say is that the scenario presented by Sergeant A and the police officers is feasible, that's to say it is possible. Whether it is probable or not depends upon the assessment of the other evidence and its credibility and reliability and that is a matter entirely for the Court.

Q. You know the time it takes is something like 0.12 of a second for a bullet to move from the muzzle, travel 5 yards or thereabouts?

A. I understand the ballistics information, yes.

Q. Do you think, assuming for present purposes the deceased was facing Sergeant A at that point, facing in the normal sense of the term, not twisting but facing, do you think it is feasible that he could have turned 180 degrees in the space of 0.012 of a second?

A. No one could turn 180 degrees in that time –

Q. No one –

A. -- no, but that's not the scenario."

[276] Professor Pounder maintained this position in respect of the evidence of Officer F:

"… If we think about what facing towards means I have already demonstrated to his Lordship the range of possibility if I stand in one position, let alone if I rotate. So if, if Mr Jordan was facing, for example, the 9.30 position where he would be on the calculations we are currently using for the trigger pull, then he would have his back to police officer F and police officer F may well perceive that as being facing Sergeant A, that's an issue of perception, it is within the range of possibility, I think, and it is for the Court to decide then whether that is reasonable.

Q. Yes. We are not talking about trigger time here, we are talking about after the bullet has left the gun?

A. Well, yes, when you pull the trigger the bullet is almost immediately leaving the gun.

Q. And almost immediately in real terms in the body of the deceased?

A. Yes, that's right."

[277] Professor Pounder was also asked about other matters, including the trajectory of the bullets and the possible order of the shots. He suggested that the difference in trajectory between the bullet to the left back and the other to the left shoulder (one slightly upwards, the other slightly downwards) was suggestive of body movement; he also suggested that bullets at the velocity of those fired in this case would not be likely to be deflected, even on striking bone. It was put to him that the location of the wounds appeared to be inconsistent with the notion of a clockwise turn, but he disagreed with that proposition "on the basis that this weapon is moving as well as Mr Jordan is moving". He also made the point that the weapon itself was not fixed. Sergeant A had given evidence that this was an instinctive shooting. He had a pistol grip in his right hand and the foregrip in his left hand with his arms taut in front of him. It follows that his gun was not effectively anchored. Sergeant A could move and so could the gun as he fired it.

[278] He was challenged as to whether perception time and reaction time were within his field of expertise as a pathologist. He said that it was within his expertise inasmuch as it is a factor in assessing cases of this kind, but he accepted that to drill down further into the science of reaction time would be beyond his expertise and that perception and reaction time were more within the field of expertise of a psychologist than a pathologist. He described the biomechanics of turning as being within the "margins" of his expertise. It is important to bear in mind that his report followed a report from Dr Cary for the next of kin who felt it within his expertise to say:

"In my opinion it is therefore not possible that the Deceased's front could have been facing Sergeant A at the time the decision to fire was taken."

Dr Cary subsequently said when giving evidence that this was "not properly within an area of expertise of a pathologist and that is how quickly someone can turn".

[279] Professor Pounder was asked as to the extent to which the literature on biomechanics of stop and turn could assist in understanding the speed at which Mr Jordan could have turned:

"Q. So they don't in fact help us in understanding the speed at which Mr Jordan could possibly, even theoretically, turn?

> A. No, what they help with is that they give a concept of what constitutes a spin turn, that it is something which is, if you like, intrinsic to every human being in terms of their ability and that it is one manoeuvre which is recognised as an avoidance manoeuvre, in other words a rapid change of direction to avoid something and it is a turn which if you perform it is very impressive and is easy to perform, you merely stand in a normal position, place your right foot forwards so that your left toe is level with your right instep and then raise your left foot and swing around. So it helps in as much as it seems to me that is what the police officers were describing.

[280] He was also asked whether the evidence of the officers who described Mr Jordan coming into contact with the vehicle would undermine this "ipsilateral turn explanation". He accepted that there would be a problem with this explanation if the right leg was against the car as the individual would have nowhere to swing the left leg around; if one were making the turn and the left leg were struck by the car, one would probably be knocked off balance and fall over. He was asked again about the ice skater analogy and he explained that it does not assist in indicating the speed at which Mr. Jordan might have turned: it can indicate "what is impossible", but not "what is possible".

[281] In re-examination by Mr Montague, he again explained the basis on which he had rejected the suggestion that perception and reaction time could be discounted:

> "Q. My learned friend read to you extracts from the transcripts of Sergeant A and Officer F that was given most recently, in the last week or so or two weeks, and it was put to you in light of those extracts that your expert opinion on reaction time and reaction time itself was a red herring and you rejected that by saying absolutely not. Why do you say that?
>
> A. Because in order to analyse what happened or what possibly happened we have to have as a starting point to start the clock ticking at a point at which we can reasonably agree where and what Mr Jordan was doing and where and what Sergeant A was doing. And the only starting point that we can reasonably agree is the point at which Sergeant A begins to perceive a threat. If that is so, then we have to take into account everything that happens thereafter which is the rate of turn of Mr Jordan and Sergeant

> A's reaction time, trigger pull time and the data on the firing of the weapon from the ballistics expert, in other words all four elements must be factored in.

[282] Dr Cary gave evidence on 15 April 2016. In his view, the mechanics of turning would not normally be regarded as within the expertise of pathologists. He questioned the relevance of the literature relied upon by Professor Pounder, on the basis that they were not concerned with running (as opposed to walking) and turning or with the timing and speed of turning. He did not explain how he had been able to reach a trenchant conclusion in his original report as to whether the Deceased's front could have been facing Sergeant A at the time the decision to fire was taken when this conclusion apparently depended on circumstantial evidence which he, unlike Professor Pounder, had not considered in any detail.

[283] He questioned the value of the clock diagram used by Professor Pounder, having regard to what had actually been said by Sergeant A in his evidence. The following passage illustrates sharply the divergence of expert opinion, concerning both the utility of the diagram and the relevance of reaction time:

> "Q. How does this clock face relate to Sergeant A's evidence in your estimation?
>
> A. Well I think Sergeant A's evidence is quite simply that, in summary form that Mr Jordan was facing him throughout the time that he was actually discharging the gun. So it seems to me that this, this doesn't really depict that.
>
> Q. Just on that issue, to what extent then is reaction time relevant in all this matter?
>
> A. In my opinion it's not relevant because we're talking about the period of time after which the gun is starting to be fired, not the period of decision making before that happened. And I say that quite simply on the basis of what Sergeant A has to say."

[284] Dr Cary disagreed with Professor Pounder's evidence concerning the trajectory of the bullets. He indicated that bone (and to a lesser extent) soft tissue can affect trajectory and he did not think that much should be made of the differential in trajectory between the bullets as highlighted by Professor Pounder. On the premise that the upper wound was likely to have been sustained after the lower wound, he suggested that one would expect the relative location of the entry wounds to be "the opposite" if the Deceased was turning clockwise at the time. He also expressed the view that, in the context of a burst of submachine gun fire, movement was never going to be rapid enough to affect where a bullet enters the

body. The pathologists all agreed that it is impossible to tell the order of the bullet wounds to the Deceased simply by their location. The evidence of Sergeant A as to how he fired his gun made it clear that the weapon was not going to be fixed on firing. In my view to try and decide which bullet was fired first and whether this indicates a clockwise or anti-clockwise turn amounts to, at best, informed speculation. It certainly does not constitute reliable evidence.

[285] Regarding the ice skater analogy upon which he had drawn in his report, his evidence was as follows:

> "Q. You had referred to the speed at which an ice skater spinning on ice could turn and Professor Pounder didn't find that useful. Can you explain why you referred to the speed of an ice skater turning on ice?
>
> A. Yes. I mean in fact I thought Professor Pounder said something rather helpful in this area, which was really the only reason I introduced this idea and that is that it shows you what is not possible – I think Professor Pounder may have said what is impossible – and that is that someone could possibly turn round on the road as fast as an ice skater can spin on ice, and that is the only purpose of introducing this, otherwise we are left with no idea of how quickly people might be able to turn round."

[286] He was referred to the evidence of Philip Boyce on 11 October 2012. Mr Boyce had commented on the shots hitting so fast that it would be like a "freeze frame" and had agreed with the proposition that at the time the trigger was pulled and at time the decision was made to fire the shots, the Deceased must have been presenting his back to the person who fired the shots. Dr Cary agreed.

[287] He was also referred to the account of Sergeant A and asked whether it was realistic or plausible. He replied:

> "A. No, put simply. There simply isn't enough time for him to turn away in any case, but this is actually during the course of the firing when the trigger has been pressed he is still presenting his front and that is wholly inconsistent with bullets entering from the back. It is as simple as that. I mean it's a terribly simple point.
>
> Q. And what is the most obvious explanation for the wounds that you have seen in the evidence?

> A. Well, that while Sergeant A was firing Mr Jordan's back was being presented. Obviously that can be pasted into what Mr Jordan was doing to present his back. I think it's obvious that if he were moving away from the firer that would be a very obvious explanation."

[288] Dr Cary was challenged by Mr Montague concerning his failure to refer to Di Maio in his report and on his reliance on the ice skater analogy. It was suggested to him that the action of Sergeant A had to be analysed as a process. He responded:

> "A. Again that's Di Maio taking a sort of overview of all of it, and there are many expert elements in terms of that overview. I would not feel comfortable as a forensic pathologist taking an overview of the whole process. My main role, and indeed a role which I take very seriously, is to say okay, let's look at the wounds in this case. There's a dispute about where this man was standing and where he was shot from and how the bullets went into his body, and so the first exercise for me was to look at the wounds and see whether I agreed with Dr Press and others that he was shot from behind to the front, because an obvious explanation for the disparity would be actually that the original pathology was not right and he was, in fact, shot front to back, and such a circumstance would be in line with what Sergeant A had to say. So my first duty was to see actually if the pathology was right, because there can be difficulties in determining whether a wound is an entry or an exit. But I, like all the pathologists involved in this case as well as Dr Press, am entirely convinced that the gunshot wounds go from back to front, and that's the main role of a forensic pathologist in these proceedings."

[289] He was challenged further on what was suggested as a failure on his part to have regard to the totality of the evidence of Sergeant A and the evidence of Officer F:

> "Q. But in order to assess what Sergeant A was faced with, you accept that one must look to see what other witnesses' accounts are?

A. Well the Court certainly needs to look at that. But for me it doesn't affect the forensic pathology evidence other than to highlight the fact that I have a very strong duty to make absolutely sure which the entrance wounds are and which the exit wounds are, because the factual background to all this is that not just Sergeant A says Mr Jordan was facing him, but also Sergeant F provides some support for the spin and the possibility of facing him."

[290] He later observed:

"A. I have made it clear several times now that I'm a forensic pathologist and I would not be attempting to give the same evidence as Professor Pounder has given around the clock and the timing because I don't regard that as being within my expertise.

Q. I see.

A. I am confining myself, let me make it explicitly clear, to the forensic pathological aspects of this and comparing them to some of the witness evidence, and I would accept by its very nature I have been quite selective in what witness evidence I have chosen, but the reason for doing that is that it is Sergeant A who was, in my view, in the best position to decide what was going on when bullets were actually coming out of the gun. Other people could easily be mistaken as to whether what they saw happened when bullets came out of the gun or whether it was shortly before or indeed shortly afterwards, and that's why I haven't got into those areas."

[291] I then expressed concern over whether the conclusion in Dr Cary's report was a pathological conclusion on the pathological evidence or on the pathological and circumstantial evidence, which would necessarily include some of the evidence of the other officers. The following exchange occurred:

"C: It does appear to me that you may have overstepped the mark that that isn't strictly just a pathological, a view on the pathological evidence, it's taking into account other evidence on which you would not have an expertise.

W: I think I would take a more simplistic view when I say that. I am simply saying it is not possible for someone who describes themselves as facing the other person they are shooting at and for them to be shot in the back. I am not trying to say that taking account of all the evidence, and I would wish to emphasise that.

C: So when you say with the circumstantial evidence, that is a qualification which should really be omitted?

W: Yes."

[292] When asked further by Mr Montague about the literature cited by Professor Pounder and the concepts of reaction time and trigger time, he commented:

> "A. … Let me make it clear, I don't disagree with most of what Professor Pounder said about reaction time or his basis for that within the medical scientific literature. All I am saying is, firstly, that's not forensic pathology and, secondly, to me this case is all about what happened after that reaction time, not how long a reaction time might be."

[293] He also accepted that the "anatomical angle" of the bullet trajectory could differ from the "effective angle", having regard to the stance and movement of Mr Jordan's body at the time of impact.

[294] It had been agreed that Professor Crane would be called again after the other pathologists. He was called after Dr Cary on 15 April 2016. He declined to add to the evidence of Professor Pounder and Dr Cary, indicating that he wished to confine his opinion to forensic pathology matters and that he did not have the expertise to comment on the additional matters raised.

[295] Mr Macdonald asked again whether he regarded Sergeant A's account as realistic. He responded:

> "A. Well, again what I would say, my Lord, is that at the time that Mr Jordan sustained his wounds the front of his body, i.e. the front of his chest, could not have been presented to Sergeant A. So at the time that the shots were sustained Mr Jordan's back must have been presented in some way to Sergeant A, and that's confining to the pathology."

[296] Mr Montague then referred Professor Crane to his response of 8 October 2012, in which he had agreed with the proposition that the Deceased could have been turning towards the shooter and was then turning away when he received the wounds (see paragraph [251] above). He was also referred to the fact that, having been asked by the next of kin to provide material on which he had relied in 2012, he provided correspondence in which he said he had referred to Di Maio. He was also reminded of his evidence in 2012 that the wounds to the shoulder and elbow would have made it impossible for Mr Jordan to raise his arm. He agreed and reiterated that it was not possible from the pathology to conclude the order in which the wounds were sustained.

[297] Throughout the evidence there has been debate about the angles of the bullets' paths, the distance Sergeant A was away from the Deceased when he fired, the view Sergeant A would have had and the conclusions which should be drawn from those facts. The fatal shots were fired from a sub-machine gun which was not anchored but held by Sergeant A. It will have moved on firing. So too might the Deceased and Sergeant A. Any movements in such a tight space will have significant effects. The difficulty is that there were no fixed points. It is not possible to say precisely where Sergeant A was when he fired the fatal shots. This is not something that can be worked out with precision or accuracy. For example, it is impossible to say the precise angle the Deceased took when he opened his driver's door to flee the scene. It is impossible to say what angle the Deceased took after he, and I stress that I use the word neutrally, changed direction. It is not clear whether he bent forward at any time. I found there to be limited assistance on these matters dependent as they were on variables which made definite and final conclusions difficult, if not impossible, to reach, especially given the time that has passed since the incident in question. For example, I do not accept that Sergeant A 25 years later would know exactly where he stood on the pavement in relation to Call Sign 8 when he pulled the trigger. His memory is bound to be dimmed by the passage of time.

[298] My attention was drawn to the findings of the Coroner, His Honour Judge Barker CBE QC in the inquest into the death of Cheryl James, that is the Deepcut inquest. In that inquest the Coroner was faced with conflicting expert evidence. Professor Pounder gave expert evidence on some of the issues which arose on behalf of the family and Dr Cary gave expert evidence having been commissioned to do so by the Coroner. It is true to say that the Coroner rejected the opinion of Professor Pounder on a number of different issues including:

(a) The opinion of Professor Pounder that the absence of an exit wound was anomalous. Indeed, the Coroner criticised Professor Pounder for not highlighting a relevant textbook passage which he thought should have been drawn to his attention and failing to mention his lack of experience on this issue.

(b) His "subjective" views on the absence of any muzzle imprint on the facial skin of the Deceased.

(c) His views on the absence of "soots" as determined by looking at the photographs.

These examples serve to demonstrate that the Coroner at that inquest was in some areas less than impressed with the conclusions reached by Professor Pounder. However, while giving weight to the Coroner's carefully considered opinion in that inquest, I have to decide this case on the evidence adduced before me.

[299] The competency of an expert to give evidence remains governed by the common law. The classic statement of the test of admissibility which has been followed in England is that of the South Australian Supreme Court in R v Boython [1984] 38 SASR per King CJ where it is said that there are two questions for the judge to decide:

> "The first is whether the subject matter of the opinion falls within the class of subjects upon which expert testimony is permissible. This …. may be divided into two parts:
>
> (a) Whether the subject matter of the opinion is such that a person without instruction or experience in the area of knowledge or human experience would be able to form a sound judgment on the matter without the assistance of witnesses possessing special knowledge or experience in the area, and
>
> (b) Whether the subject matter of the opinion forms part of a body of knowledge or experience which is sufficiently organised or recognised to be accepted as a reliable body of knowledge or experience, a special acquaintance with which by the witness would render his opinion of assistance to the court. The second question is whether the witness has acquired by study or experience sufficient knowledge of the subject to render his opinion of value in resolving the issues before the court."

It is also clear that an expert is entitled to rely on research carried out by another expert even though, as here, he has not verified that research himself: see Blackstone at F10.34.

[300] I consider that I am entitled to hear expert opinion from Professor Crane, Dr Cary and Professor Pounder on the issue relating to the circumstances whereby the Deceased came to suffer his fatal injuries. I found the evidence of Professor Pounder helpful and the clock device of assistance in understanding the mechanics of what may have happened. I was able to understand Di Maio and the conclusion reached by Tobin and Fackler that there are circumstances where an individual is apparently facing a shooter but when the gun is discharged that individual is presenting his back. If the Deceased "burled" or turned dynamically as so vividly described by Officer F, then it is possible scientifically, and I stress the word possible, for the Deceased to have appeared to be facing Sergeant A before he fired his sub-machine gun but for the bullets to have entered his back.

[301] In his interview immediately after the incident with Detective Superintendent McBurney on 26 November 1992 Sergeant A said:

> "When the driver spun round towards me I forcibly pushed the safety catch from safe to automatic."

He went on to say:

> "When I made the split second decision to fire the man was facing towards me but I honestly can't say whether he had turned on round or had moved in some other way."

As I have noted, it makes no sense whatsoever for Sergeant A to have invented a version where the Deceased spins/turns round prior to him firing when, on the next of kin's version, he must have known that he was discharging the bullets into the Deceased's back. He must have seen with his very eyes what he had done. This was an action carried out at close range, the shots were fired from a distance of a few yards at most. In those circumstances it would be inexplicable for him to rely on the provisional opinion of Officer F that the entry wounds were to the chest when, on the next of kin's version, he would have seen the bullets striking the Deceased's back.

[302] Sergeant A stressed just how quickly the incident had happened, within split seconds. In an inquest the temptation is to break it down into different actions which happen in sequence. In reality it is much more difficult. Many points have been made about among others the angle of the entry of the bullets, the position of the entry wounds and the sequence of firing but as I have said these do not really assist me. There is no fixed point at which they can be anchored. They remain variables dependent on other "facts" that may or may not be correct.

[303] I consider Dr Cary's view, that the version put forward by the PSNI was impossible, failed to take into account the circumstantial evidence but more importantly failed to give any weight to Di Maio's textbook and the research that

had been done on this issue. I am of the view that it is possible that when Sergeant A made the split second decision to fire the Deceased appeared to be facing towards him. It is therefore my conclusion that the police version of how the Deceased came to be shot in the back provides a possible explanation for what happened. However, that possibility, in the sense that it could happen, has to be weighed in the balance with all the other evidence before I am able to reach a definite conclusion.

R. THE STALKER/SAMPSON REPORTS AND THE POLICE OMBUDSMAN'S REPORT ON THE NEIL McCONVILLE KILLING

[304] There was considerable focus on the Stalker/Sampson reports into three particular incidents which occurred within a matter of weeks in the tail end of 1982. These are:

(a) The Tullygally East Road incident which occurred on 11 November 1982 and involved three Republican terrorists, Burns, Toman and McKerr who were all shot dead after a car driven by McKerr failed to stop at a VCP.

(b) The Ballynerry Road North incident on 24 November 1982 which involved the killing of Michael Tighe and the serious wounding of Martin McCauley at a hayshed at 12 Ballynerry Road North, Lurgan by the police.

(c) The Mullacreevie Park incident of 12 December 1982 involving the killing of INLA members Grew and Carroll by the police after they had been forcibly stopped by members of HMSU.

These killings followed the murder of three police officers on 27 October 1982 when a bomb had exploded at Kinnego.

[305] The inquest's attention was also drawn to the killing of Neil McConville on 29 April 2003 when he was shot dead by police after failing to stop a vehicle when directed to do so.

[306] There are to be inquests into the killings which were the subject of the Stalker/Sampson reports. They will obviously consider all the facts and circumstances surrounding the deaths of all those involved during this short space of time in 1982. It would be imprudent of this inquest to attempt to usurp the function of those inquests. Indeed, it seems to me that on issues as to whether, for example, there was a "shoot to kill" policy being operated by the security forces along with organised cover ups, are issues that would be much better addressed taking an overall thematic approach to what happened during these different incidents rather than narrowly focusing on one particular killing. I do find myself at a distinct disadvantage. Serious allegations of perjury have been made against the Officer in Command of HMSU, Officer V. There is much force in the PSNI's

submission that in the instant case the next of kin are asking the Coroner "to make the findings of fact in support of allegations of the utmost gravity having been presented with only fragments of the evidential material".

[307] It is also important to realise that context can be relevant. These shootings are spread over 21 years from 1982 to 2003. In 1982 conditions were different it is suggested to those prevailing in 1992 or in 2003. In 1982 there had been eight murder attacks on the security forces and car bombs, booby traps and culvert bombs had been directed at the police and military. There were a number of very active service units from PIRA and INLA operating in Northern Ireland. Intelligence was limited and it was critical that security forces protected all their sources of information, including not just civilian sources but also information obtained from bugging and other electronic devices. Of course, I stress that while the ends can never justify the means, the background information may provide a better context to assess why these unacceptable means were employed.

[308] In 2003 some changes had been introduced in the light of what had happened in the previous 30 years. There was now a system of command, that is gold, silver and bronze, which did not exist in 1992. There was the ACPO Manual of Guidance on Police Use of Firearms which specifically took into account the Northern Ireland situation and much of the criticism of the Ombudsman in her report is levelled at the police for failures to follow policies and Standing Orders which did not exist in 1992. It is interesting to note from this report that:

(a) The Ombudsman made no criticism of the police for conducting a debriefing after this fatal shooting (and indeed was represented at it).

(b) The trigger mechanism of the Heckler and Koch sub-machine gun needed to be adapted to remove the automatic capability which it still had with the exception of a number of weapons kept in the armoury for which specific authorisation for their use had to be given. (If the present inquest had been concluded with due expedition this evident problem with the safety catch may have been solved and subsequent death avoided.)

[309] There can be no doubt that in respect of the 1982 killings, the police sought deliberately to conceal the facts that the killings were the culmination of covert operations driven by intelligence obtained from civilian informants on the ground or from electronic devices. There were claims that the police had been prevented from telling the unvarnished truth by the Official Secrets Act and that they were encouraged, if not pressurised, to lie about the true nature of what had happened by senior officers. This inquest was assured by police witnesses that it was never intended that these statements would be given in evidence in court, although it seems that some officers may not have regarded an inquest as a court of law. The court was told that the officers would not have been constrained from telling the truth. An example of the difficulty which this inquest has had in getting at the truth

of this matter which will undoubtedly be the subject of considerable focus in respect of the Stalker/Sampson inquests, is whether, for example, the officers did set the record straight. Officer V said that there was a secret file created which set out exactly what had happened. There is no doubt that a secret file did go to the DPP containing statements which to some extent contradicted the original statements given immediately after the December killings, for example. However, Officer V says that he gave further comprehensive statements disclosing exactly what had happened to a senior officer about all three incidents. This led to the officer being identified and being called to give evidence. He had no recollection after 30+ years of receiving such a statement or statements. But, he said, he had no reason to doubt the claims of Officer V. It is simply impossible for me at this inquest to investigate what might be described as peripheral information. To conclude that Officer V committed perjury before this inquest, when I may not have all the information, would be unfair not just to Officer V but to everyone concerned. No doubt this will be the subject of an in-depth inquiry and determination at the Stalker/Sampson inquests.

[310] I consider that the relevance of the Stalker/Sampson incidents and the McConville killing is considerably weakened and undermined by the passage of time that separates them from the killing under present investigation. It is important to concentrate on the evidence before this inquest about what happened on 25 November 1992. However, there are certain lessons to be learned. Firstly, this inquest must be alert to at least the possibility that one or more police officers may conspire together when it suits their purposes or those of their superiors to provide a misleading cover story to explain their actions or inactions. Everyone will know this insight has recently been underlined by the findings of the Hillsborough Inquiry.

[311] Secondly, I am impressed by what Kelly LJ concluded after he had heard the prosecution against the survivor of the Mullycreevie incident, McAuley. He made a number of pertinent findings and comments. He had "reservations about the credibility and accuracy" of certain parts of the police evidence. Their credibility had already been compromised by the false statements they made, and in particular the statement of Officer M that he had seen a man with a rifle entering the hayshed. Kelly LJ doubted his evidence about where the police were when they fired their shots and whether they did see McAuley and Tighe holding and pointing rifles. He was sceptical of the claim that they had pointed unloaded rifles at the police including Officer M. This doubt was reinforced by the medical evidence. At the very least the judgment of Kelly LJ casts considerable doubts on the credibility of Officer M and raises the question of whether he would lie under oath when it served his purposes. This weighs with me when I ask myself did he lie about whether he had information that DP2 was involved with the Orion or even knew who DP2 was.

[312] Thirdly, the officers, including Officer V, clearly made up a story about Grew and Carroll crashing through a police vehicle checkpoint and injuring Constable Brannigan who was not even on duty at the time. MacDermott J giving judgment in R v Robinson states:

> "That he and the other members of the unit were told by senior police officers to give this story so as to conceal the fact that they were participating in a planned operation based on a source of information and acting in concert with Army surveillance teams. **There is no doubt that this is so**. (Emphasis added)

[313] It would appear from the Ombudsman's report on the McConville killing, that Officer M, who provided tactical advice during the operation leading to the death, was less than fully co-operative with the Ombudsman's investigation. Further, he claimed that his original statement had been altered when it was put to him but then withdrew his allegations following further investigation.

[314] In the McConville case there were a number of important differences which related not just to different policies and Standing Orders which were in force. First of all there was no one in overall charge of the two cars attempting to effect the stop. In the present case Sergeant A was in overall command of both Call Signs 8 and 12. Secondly, there was a helicopter monitoring what was happening on the ground. There was no helicopter in 1992. Thirdly, the Control Room directed the tactics of a stop from behind and the officers "twice questioned the decision to stop the vehicle from behind". In this case only initial tactics were given to Call Signs 8 and 12, namely to effect a stop relying on the defective rear lights. There were no detailed directions given by the Control Room in the case presently under consideration. Fourthly, it was highly likely that the occupants would be armed in 2003 and "highly unlikely to be compliant with a police command". That was not the understanding of the officers of Call Signs 8 and 12. Officer M should have provided the information to Call Signs 8 and 12 that DP2 might be driving the Orion although it does not appear from the evidence that the tactics adopted would have changed. The alternative open to Call Signs 8 and 12 was to permit a car, which they concluded was likely to be carrying a bomb primed to explode or munitions, to escape. Sergeant A was not prepared to run this risk. Given the prevailing conditions this does not appear to be an unreasonable stance to have taken.

[315] Chapter 23 of the Police Road Traffic Manual which applied in 1992 provided guidance on the basic principles to be borne in mind by police officers when stopping vehicles. In particular the inquest's attention was drawn to the paragraphs relevant to the casual stop directed by TCG and carried out by Call Sign 8. These are:

> "10.4 The police officer will attract the target vehicle driver's attention by sounding the alternative horn and operating blue lights, were available, whilst remaining behind the target vehicle.

> 10.6 The police observer will signal to the target vehicle driver to pull in and stop.
>
> 10.8 Police should always endeavour to stop vehicles from the rear.
>
> 10.9 It is again stressed that the above procedures for stopping motor vehicles are guidelines. If a vehicle is suspect from a security point of view, members must exercise their own discretion in deciding the safest method of stopping it in the circumstances prevailing …"

The present position as embodied in the Police Service ACPO Instructions, that it is always preferable to stop vehicles from the rear, was re-iterated in 2007 by PSNI.

[316] It seems to me that regardless of the fact that the McConville incident took place 10 years after the shooting of the Deceased, the facts were so materially different that detailed consideration of what happened offers limited, if any, assistance to this inquest. However, there is one matter which is of particular relevance. In that case the police officer had discharged his MP5 at Neil McConville. But he had inadvertently selected the "automatic" mode on the weapon, rather than the "single shot" and three bullets were discharged. These caused fatal injuries to Neil McConville. The circumstances in which the gun fired automatically bear a striking similarity to what happened in this case. At paragraph 17.09 of the Report, the Police Ombudsman said that she had "found that multiple discharges have taken place with MP5 weapons, when a single bullet was intended to be fired. Officers have also informed the investigation that this regularly happens in training and a Forensic Scientist had confirmed this error can easily occur with the weapon. On this occasion a man died. There is a significant risk of a similar situation occurring in the future. The PSNI currently have weapons which discharge a continuous flow of bullets on automatic mode, and others which discharge three bullets in automatic mode. It is not accepted that a general use is necessary, and they significantly increase the risk of serious or fatal injuries."

The Police Ombudsman recommended in the Neil McConville investigation that all operational weapons "be immediately adapted to remove the automatic capability with the exception of a number of weapons kept in an armoury for which specific authorisation for their use should be given (if it were felt that that capability was required)".

That recommendation seems well considered. It is one which this inquest intends to endorse. Here is a practical precaution which might have been taken earlier and which might have resulted in the saving of human life, if this inquest had been held with due expedition.

[317] It is appropriate that I look hard at the evidence of the police officers, subject that evidence to anxious scrutiny and weigh it in the balance against the empirical, objective evidence. I also have to recognise that the police officers have no criminal record and can be considered to be of good character. However, in view of the reservations expressed by Kelly LJ I intend to treat the evidence of Officer M with very considerable caution especially given my own misgivings about his testimony. I also bear in mind that Sergeant A and Officer V were prepared to dissemble on receipt of orders to do so from above approximately ten years before this incident. I also have to weigh in the balance the civilian evidence which I found persuasive namely the testimony of McAllister to the 1995 inquest.

S. DISCUSSION AND FINDINGS

[318] The objective, empirical evidence proved beyond doubt that the Deceased was shot in the back by Sergeant A. He was struck by three bullets. It was the one that entered the left side of his back and passed forwards and upwards lacerating the lower part of the left lung, the aorta, the heart sac and the right lung which led to his rapid death.

[319] It is clear that the timeframe for what happened after the Deceased was forced to stop his Orion is a very short one. At most it will have stretched to a matter of seconds. It is also clear given the reconstruction based on the damage to Call Sign 12, the second police car, and which is shown in a photograph taken by Steve Quinn, Forensic Investigator, that what happened did so within a very narrow compass. These events were closely confined both in time and in distance.

[320] It is not disputed that the three rounds which were fired were part of a burst of 5 rounds of automatic gun fire. But the circumstances in which those rounds were discharged are highly contentious and have been the subject of a heated debate which has continued on for nearly 25 years. It falls to me to try and determine just what actually occurred on that late afternoon on 25 November 1992 on the Falls Road. A difficult task has been made much more difficult by the delay which has undoubtedly dimmed memories and shaped the recollections of those who were involved. Those original memories, both of many of the civilian witnesses, and the police witnesses, may have also been contaminated by discussions before any involvement of the CID who took statements from both the civilian and the police witnesses. Indeed, witnesses may be remembering the evidence which they had given to two earlier inquests or it may be that such evidence has coloured their testimony at this hearing.

[321] I have identified those civilian witness who have undoubtedly been coloured by prejudice and animosity towards the security forces. The claims that the police administered a brutal kicking and punching to a dying man in full view of backed up traffic both countrywards and citywards are scarcely believable. There is no physical evidence to support them and the Deceased was subject to a detailed examination by Dr Press during the post mortem examination. Mr Malone

apparently forgot to mention this police brutality in his original statement to the police made in the presence of his own solicitor shortly after the events under consideration. Furthermore, not only is his claim about police violence contradicted by the police, it was also missed by other civilian witnesses who saw the events unfold before their eyes. Mr Malone's overt pride in having been a member of PIRA at some earlier stage, was scarcely designed to provide reassurance as to his independence. Indeed, for the reasons I have set out, I consider that the evidence of the four workmates is unreliable for a number of reasons which include:

(i) they were convinced the shots were fired from the off-side of Call Sign 12 by a police officer who must have been Officer F. It may be that on seeing Officer F poised to fire, they assumed that he was the person who fired the weapon;

(ii) they were certain that the spent cases had been planted on the footpath although they saw none of the police officers move them from the road on to the footpath; and

(iii) they assumed that Call Sign 12 was removed as part of a cover up of what was a shoot to kill operation.

There were obvious inconsistencies running throughout their evidence and having an opportunity to see most of them give evidence, I remained unimpressed. In fairness, they face a near impossible task of trying to remember back all those years.

[322] Lawrence Moylan's evidence is undermined by his claim that there was a break in the shooting, and the fact that he considered the shooter fired the fatal shots from the off-side of Call Sign 12 which was positioned in front of the Orion. Further, his recollection that the shooter had rested his left elbow on the boot of Call Sign 12 also undermines the reliability of his recollections. He could not be contacted prior to this inquest and did not give evidence. His testimony could not be tested and consequently he was unable to assist the inquest on these obvious inconsistencies.

[323] Patrick McAllister also could not be contacted and did not give oral testimony and I had no opportunity to assess his bona fides. His statement and the transcript of his evidence to the 1995 aborted inquest hearing seemed convincing. There is no reason to doubt his claim that he tried to block these awful events from his mind. He clearly saw the Deceased shot in the back. He saw no dynamic turn. The PSNI has sought to call in aid the testimony of some of the other civilian witnesses in an attempt to prove that they provided corroboration for the claim that the Deceased turned dynamically before he died. Doing so there is a considerable amount of "picking and choosing". However, I find the evidence of the civilian witnesses (for the most part) to be unreliable and having seen them give evidence I am not prepared to give weight to their evidence about how the Deceased may have turned whether for the next of kin or the PSNI.

[324] I listened carefully to all the expert evidence, and in particular, to the testimonies of Dr Cary, Professor Pounder and Professor Crane. Their evidence has been summarised above and I do not propose to repeat it here. However, I am satisfied that it is scientifically possible in certain clearly defined circumstances, and I stress possible, that the Deceased may have appeared to be facing Sergeant A when he decided to open fire but that the bullet that killed him would have entered him from the rear because of the ipsi-lateral turn he was making at the time.

[325] I have set out my views in respect of the police officers' evidence, and in particular in respect of those police officers who were travelling in Call Signs 8 and 12 on 25 November 1992. The general impression that I had of those witnesses was a favourable one. They appeared to be straightforward. They were tested in cross-examination. They largely emerged unscathed, and that should be seen in no way as a criticism of the skilful manner in which counsel for the next of kin cross-questioned each of them. I also accept that the version of events which they gave is scientifically possible, although objectively it is unlikely. But I remain unconvinced on the balance of probabilities that what I was being told as to how the Deceased met his death did happen for a number of reasons. These include:

(i) Although I found the police evidence convincing and credible, some of those police officers who did give convincing testimony were, I conclude, lying to me about their knowledge of how the operation was reported in the immediate aftermath by the press. I am unable, having observed them closely, to identify which ones were telling untruths. I simply do not believe that none of them bothered to find out how this incident had been reported in the press and consequently failed to learn that it had been described as a 'botched' operation.

(ii) The whole way in which the debrief was conducted, that is permitting Sergeant A to give his version first, had the ability to contaminate and taint the versions of events subsequently offered by his fellow officers.

(iii) The evidence of Patrick McAllister to the 1995 inquest contains no claim that the Deceased turned right round prior to the shooting. His evidence appears to deserve to be given weight.

(iv) The evidence of Sergeant A does not include any claim that the Deceased turned round 360°. Sergeant A says that he could have turned on round but he did not actually see this happening, which is surprising.

(v) Sergeant A was prepared to tamper with the log in the Mullacreevie Park incident in 1982 to provide a false cover story. He agreed that he had been prepared to lie on that occasion.

I have not been satisfied on the balance of probabilities that I have been told the truthful version by the police officers concerned as to how the Deceased met his

death. I accept that if the PSNI version is correct, then there will have been no substantive breach of Article 2 of the ECHR.

[326] The version of events put forward by the next of kin, namely that the Deceased was deliberately shot in the back without any justification while fleeing the scene, also has its difficulties. I accept that the facts of the case involving as they do the shooting in the back of an unarmed man running across the road are on the face of them strongly suggestive of police wrongdoing. Occam's Razor suggests that the most straightforward solution is usually the correct one. However, I did find the police evidence credible and cogent subject to the qualifications set out above. Further, no satisfactory explanation has been offered as to why a man such as Sergeant A with years of counter-intelligence experience and a record of not using unnecessary force would suddenly assume the mantle of a cold-hearted killer who believed that he was entitled to shoot on sight and in the back a young man simply because he was assisting PIRA. I was not persuaded by the representations made on behalf of the next of kin as to how the Deceased's death occurred.

[327] I do not accept that this is a binary decision and that I am obliged to choose whether the representations of the next of kin are more convincing than the representations of the PSNI. It is a search for the truth of what happened. The truth, whatever it is, has to be proved on the balance of probabilities.

[328] I note that a decision was taken not to charge Sergeant A with murder and/or to institute a criminal prosecution arising out of the death of the Deceased. This is not surprising given that the conflicting evidence makes it difficult to reach definite conclusion as to exactly what happened.

[329] I am not prepared to speculate, because that is what I would be doing, on what I consider to be the circumstances in which the Deceased met his death. It would be unjust and unfair of me to guess. I must only make findings on the basis of what has been proved to the requisite standard, that is the balance of probabilities. It is sufficient to record that no version has been put forward which commends itself to this inquest on the balance of probabilities. The reason why delay is the enemy of justice is clearly demonstrated by this inquest. Taking into account all the evidence which has been adduced it is not now possible at the remove of 25 years to reach a final conclusion which is fair and just to both sides, given the doubts which I continue to harbour about how the Deceased met his death. It follows therefore that in my opinion the State has failed to discharge the onus which lies upon it under Article 2 of the ECHR to prove on the balance of probabilities that the killing of the Deceased was lawful. It also remains a matter of some speculation whether, had the PSNI discharged its obligation of full disclosure at an earlier stage, and had an inquest been held with due expedition, the quality of the evidence available would have been sufficient to discharge the onus upon it.

T. FINDINGS ON KEY ISSUES

[330] My answers to the issues raised by Stephens J in In The Matter of Three Applications by Hugh Jordan for Judicial Review and which define the scope of this inquest are as follows:

(a) Why Sergeant A had a round in the breech before he got out of his car? The Force Order 58/1992 provides that it is permissible to carry a round in the breech only if the circumstances justify it. The next of kin urged that Call Signs 8 and 12 were instructed to carry out "a casual stop" using the defective rear lights of the Orion. The fact that the Orion did not stop did not justify Sergeant A in having a live round in the breech. They state that the Yellow Card which applied to the military did not permit a soldier to have a live round in his breech unless that solider was about to open fire.

On the other hand the PSNI urged that this was an appropriate action by Sergeant A given the high threat to the police and/or to the public.

My view is that when the Orion took off Sergeant A was justified in having a live round in his breech because of the real risk that such a reaction signified that the Orion was carrying munitions and that the driver might be armed and prepared to shoot his way out, if necessary, should the police attempt to stop his car.

(b) Whether Sergeant A shouted "Police, halt" or words to that effect before he fired? The evidence on this issue was thin. There was no independent support for Sergeant A shouting any of these words or indeed shouting at all. None of the civilian witnesses heard anything. Neither did some of the police witnesses. Two of the police officers did hear shouting but not the words which were spoken. As I have said I found Sergeant A to be a credible witness who, if anything, understated his evidence. I am satisfied that Sergeant A shouted something at the Deceased before he opened fire. I cannot be satisfied on the balance of probabilities that these were words to the effect of "Police, halt". I have no doubt that the Deceased knew the police officers had exited Car Sign 8 and that these officers were armed. I find on this issue that I am unable to reach a definite and firm conclusion as to what was shouted. However I have no doubt that Sergeant A shouted and that the Deceased was aware of his presence.

(c) Whether Sergeant A issued any warning that he was going to fire? See (b) above. To the extent that Sergeant A shouted, this would have the effect of warning the Deceased of his presence. However, I am not satisfied on the balance of probabilities that he issued any warning that he was going to fire. Sergeant A did not make that case.

(d) Whether the Deceased did anything that as a matter of objective fact, posed a threat to Sergeant A or to any other police officer? The Deceased objectively was no threat to Sergeant A or any of his colleagues. He was unarmed. However, if he turned in the manner described by Sergeant A, and for which there is support from other police officers, then Sergeant A for the reasons which I have set out could in those particular circumstances have feared for his life and those of his colleagues, and in particular Officer C. However, on this issue I am unable to reach a firm conclusion as to whether in fact the Deceased did turn in the manner as is alleged by Sergeant A. Twenty five years later I remain unsure as to what happened on that early evening and I am not prepared to speculate.

(e) Whether Sergeant A's view of the Deceased's hands was obstructed? I am unable to reach a view as to whether the Deceased did turn as is alleged by Sergeant A and the other police officers. If he did turn dynamically as is claimed then whether Sergeant A's view of the Deceased's hands was obstructed depends on a number of variables including precisely where Sergeant A was standing. I found Sergeant A's oral testimony convincing about not being able to see the Deceased's hands. However, I can reach no firm conclusion on this because other evidence causes me sufficient concern to leave me undecided as to how precisely the Deceased met his death. While the Deceased's hands may have been obstructed in those circumstances, from Sergeant A's vision, I am unable to reach a final view on the balance of probabilities.

(f) Whether the Deceased turned round to face towards Sergeant A? See (e) above.

(g) Whether the Deceased was facing Sergeant A when Sergeant A fired at him? See (e) above.

(h) Whether Sergeant A honestly believed that the Deceased did anything to pose a threat to him or at any other police officer? See (e) above. I remain unsure as to the circumstances in which the Deceased was shot and I am not prepared to guess.

(i) Whether Sergeant A selected automatic fire rather than a single shot deliberately or accidentally? On the balance of probabilities I consider given Sergeant A's reaction in the aftermath of the incident, and the manner in which he gave his evidence before me, that he did not intend to engage automatic mode. He did this accidentally as he pushed the switch forward. It is a matter which still causes him obvious regret because it reflects poorly on his ability as a marksman. There is evidently a problem with the mechanism which permits the

safety switch on this gun to be switched to automatic fire accidently. The nature of the mechanism in general and the force required to move from safety to automatic is such that if the mechanism on this weapon now is the same as it was in 1992, then it should not be used by armed police officers (except where there has been specific authorisation for their use). There is simply too great a risk of an error being made in the heat of the moment. I strongly endorse recommendation 5 made in respect of these types of guns by the Police Ombudsman in the report she prepared following the death of Neil McConville.

(j) Whether Sergeant A was justified in firing in breach of the RUC Code of Conduct governing the discharge of firearms? See (e) above. On Sergeant A's version of events he was justified given that he reasonably feared for his life and/or that of his colleagues. Whether the scenario painted by Sergeant A is accurate remains uncertain.

(k) Whether Sergeant A could have taken another course of action, such as using the protection of the armoured vehicle as an alternative to firing at the Deceased? If the Deceased turned as Sergeant A alleges, then Sergeant A could have taken alternative action as a matter of fact. However, if his version of events is correct, and I am unable to reach a definite conclusion on this, the lives of his colleagues, and in particular the driver, Officer C, whom he assumed would be getting out were also at risk as they emerged from Call Sign 8. In those circumstances, which were not proven on the balance of probabilities, he did not have an alternative course of action open to him.

[331] Two issues arise in respect of the debrief. Firstly, whether it was appropriate to conduct a debrief prior to the interviewing of witnesses by CID. It is clearly not appropriate to conduct a debrief at this stage unless this was carefully supervised and there was no risk of Sergeant A's version of events being able to influence the evidence of the other police officers. The failure of the Chief Constable(s) to ensure that the practice of carrying out a debrief was discontinued in this type of case, is regrettable. The lessons of the Stalker/Sampson inquiry should have been learnt. It is deeply disappointing that new procedures were not adopted following this report. No doubt this is a matter that will be considered more fully at the Stalker/Sampson inquests.

[332] Secondly, whether the primary purpose of the debrief was to facilitate the exoneration of Sergeant A? It is my view that the primary purpose of the debrief having listened to the evidence was to establish the events which unfolded that afternoon in a chronological fashion, given CID's inability to attend. No evidence was adduced before the inquest to demonstrate that CID's delay in attending was due to pressure of other work. Such an explanation has not been tested in cross-examination. However, I conclude that an unintended consequence of the debrief, and the way in which it was managed was that Sergeant A's history of what he says

happened was relayed in circumstances where it was capable of influencing the other police officers who were involved. This is a matter which has weighed with me in trying to reach a conclusion as to what happened. Having scrutinised Officer V giving his evidence under significant pressure, I am satisfied on the balance of probabilities that the debrief was not intended to facilitate a cover-up, although it is possible that this may have been an unintentional consequence.

[333] There are a number of issues raised in respect of planning and control. These were:

(a) Whether there was a clear line of command within the operations room. I have set out earlier in the judgment in the Section entitled 'Tasking Co-ordinating Group' what I understood to be the line of command. This was clearly understood. D/Superintendent AB was in overall control and below him was D/Inspector AA. Below D/Inspector AA was Officer M. However, it was apparent that Officer M was under enormous pressure. He was working very long hours. He spoke of working 38 hours without a break. He together with Officer Q was responsible for the failure to tell Call Signs 8 and 12 that DP2, a prominent PIRA member, might be driving the Orion. I also note that Kelly LJ had found Officer M to be an unreliable witness when he gave evidence before him many years before. So although there was a clear line of command, it would appear that Officer M did not provide Call Signs 8 or 12 with all the necessary information they could reasonably have expected to receive. I also appreciate that Sergeant A said that knowing the possible identity of the driver of the Orion would not have affected the way in which he gave orders to both Call Signs 8 and 12.

(b) Whether the TCG exercised any adequate control and supervision over the conduct of officers on the ground? The control exercised by TCG was adequate in the circumstances. When the Orion came out on its own, this suggested that it was not carrying munitions. The tactic of a casual stop made good sense and this was the instruction given to Sergeant A. However, the reaction of the Deceased in trying to escape provided objective evidence that the Orion might be carrying munitions and that carried with it real risks to Belfast and to members of the security forces. It made good sense that Sergeant A, one of the most experienced officers in counter-terrorism in Western Europe, should make the decisions on the ground and react to events as they happened. His experience was that PIRA terrorists on an active mission would surrender to armed police when challenged in circumstances in which the odds were not in their favour. This was the evidence before the inquest. It has not been challenged. Sergeant A's reaction was to give chase and this was a reasonable one. At all times TCG remained in radio contact with Call Signs 8 and 12. In the

circumstances TCG did exercise adequate control and supervision over the conduct of Call Signs 8 and 12, and Sergeant A in particular.

(c) Whether TCG officers or Officer M gave any advice, guidance or directions to the police officers on the ground in relation to stopping the car and the importance or otherwise of stopping the driver? No advice, guidance or directions were given by the TCG officers or Officer M other than the advice that they should seek to effect a casual stop relying on the defective rear lights of the Orion. The crews of Call Signs 8 and 12 were highly trained and experienced. Sergeant A was exceptionally well qualified by his experience and training. Officer M should have advised Sergeant A of the potential involvement of DP2 with the Ford Orion. Even if Sergeant A had been advised that it was likely that DP2 was driving the Orion, then it is likely that the same request would have been made to the Orion driver to stop. However, on the basis of the evidence before this inquest, it is likely that DP2 would have done as requested.

(d) Whether the decision to stop the vehicle by way of a casual stop, as opposed to a vehicle checkpoint, in the absence of any clear direction as to what should happen in the event that the driver ran away caused and contributed to the death of the Deceased? The decision to use a casual stop on the evidence before the inquest was reasonable. Past experience had indicated the driver of the Orion would stop whether or not the car was carrying munitions. The fact that there was no scout car as I have said, was an indication there were no munitions or primed bomb on board. The fact that the driver was on his own was another indicator that he was likely to be compliant with the requests by a police officer to pull over. This is because a suspect's behaviour, I was informed, is more malleable in the absence of peer pressure. The risks with setting up a VCP were not explored at the inquest in any detail. However, there was some discussion about the logistical difficulties of setting up effective VCPs at this location. I am satisfied that it was physically possible to set up such VCPs in a citywards and countrywards direction. However, there can be no doubt that the presence of such VCPs would have completely compromised the entire surveillance operation. Inevitably the presence of PIRA "dickers" would have meant that a valuable intelligence opportunity to disrupt potential lethal bombing attacks or the movement of munitions could have been wasted. As I have noted, the civilian witnesses were already alert to the presence of Call Signs 8 and 12. The conditions at the time, and in particular the threat to Belfast and its inhabitants, were such that Call Signs 8 and 12 acted reasonably by giving chase and bringing the Orion to a halt. The alternative of allowing the Orion to escape with munitions on board was unacceptable at this time. The campaign of violence being waged by PIRA, involving as it did bombing and

shooting, did not permit the police to take a chance and allow the Orion to flee the scene. There was too much at stake. Death and devastation could follow if the police made a mistake. I am satisfied on the balance of probabilities that the absence of any clear direction as to what would happen in the event the driver drove off at speed did not cause or contribute to the death of the Deceased. If instructions had been given, then I conclude on the balance of probabilities that those instructions would have been to give chase, if the driver did not stop and ensure that he did.

(e) Whether, therefore, the planning and control of the police operation was such as to minimise recourse to lethal force? The planning and control of the police operation did minimise recourse to lethal force. Stopping the Orion on the pretext of a faulty light was a reasonable one. There was no reason to conclude that the request to stop this car on its own would be ignored. The police officers could not be expected to anticipate that the Deceased would panic and flee the scene. The police reaction in giving chase in the particular circumstances was, I find, a reasonable one. The RUC acted quite properly in leaving control on the ground to Sergeant A who had proved himself in countless counter-terrorist incidents. It is important not to view events with the benefit of hindsight. In Bici v Ministry of Defence [2004] EWHC 786 (QB) at [46] Elias J said:

> "Second, I also bear in mind certain observations of Lord Diplock in *Attorney General for Northern Ireland's Reference (No.1 of 1975)* [1977] AC 105 at 138 when he observed that often a solider has to act intuitively and that in assessing his conduct when judging the action of the reasonable soldier, it is important to recognise that his action 'is not undertaken in the calm, analytical atmosphere of the court room after counsel with the benefit of hindsight have expounded at length the reasons for and against the kind and degree of force that was used by the accused, but in the brief second or two which the accused had to decide whether to shoot or not and under all the stresses to which he was exposed'. Those observations were made in the context of a criminal case, but in my view they apply no less forcefully when considering liability in civil law."

I also consider that they apply with equal force to coronial law.

Anyone can be wise after the event. The approach adopted by the RUC in attempting a casual stop with the Orion was reasonable and well planned. What happened afterwards could not have reasonably been foreseen.

U. CONCLUSION

[334] The Deceased was shot and fatally wounded on 25 November 1992 on the Falls Road. At the time of his death he was on a mission for PIRA. He was unarmed. The Ford Orion which he was driving had been used earlier that day to carry substances used in the making of improvised explosives, namely ammonium nitrate and sugar. At the time of the shooting the Orion car was not being used to ferry guns, explosives or other munitions. It is now impossible with the passage of time to say with any certainty what happened on that fateful afternoon. At the remove of a quarter of a century I am simply unable to reach a concluded view which is fair and just as to whether the use of lethal force was justified or not. I remain profoundly unsure as to what happened. Neither side, for the reasons I have set out, have been able to convince me that what they say did occur immediately prior to the Deceased's death. On the balance of probabilities if the events did happen as PSNI contend, and as I have said I have been unable to determine that issue on the balance of probabilities, I am satisfied that Sergeant A acted in self-defence and that there was no breach of Article 2. However, in so far as the onus lies on the PSNI to provide a satisfactory and convincing explanation to the inquest for the use of lethal force it has failed to do so. But how precisely the Deceased met his death on that fateful afternoon has not been proved to the satisfaction of this inquest and remains unknown.

V. RECOMMENDATIONS

[335] This inquest in the light of its findings, and it accepts that with the passage of time some of these may be redundant, makes the following recommendations:

Recommendation 1

One of the recommendations of Stalker Sampson was that the policies and practices of the RUC should in the future reflect the primacy of the CID investigation, which includes the preservation of evidence and questioning of suspects free from constraints placed on the investigation by Special Branch. Specifically, it was recommended that, when incidents such as the 1982 shootings occurred, there should be no debriefings of officers before interviews with CID unless on the instructions of a Chief Officer who would later accept responsibility. For the reasons given above, I endorse that recommendation.

Recommendation 2

I recommend that the weapons issued to PSNI officers must not have the facility to have an incorrect firing mode selected by mistake. I heard no evidence as to the current state of the weapons used by PSNI Officers and am conscious that the PONI report into the death of Neil McConville made recommendations about weapons issued to PSNI [see para 17.10 of that report]. However, given the importance of this issue I consider it necessary to reiterate this recommendation.

Recommendation 3

A review should be held as to why the intelligence of 25 November 1992 at 3.40pm was not disclosed in the initial disclosure of sensitive material relating to the death of the Deceased and why it did not emerge until the last inquest was underway. This was a document generated in the course of the surveillance operation that culminated in the death of the Deceased.

Recommendation 4

It is vital that after the death of any civilian at the hands of the State's agents that the scene of the death is preserved until it has been adequately examined, tested, mapped and photographed by SOCO.

Recommendation 5

Further at the scene of such deaths the names and addresses of all possible witnesses should be recorded contemporaneously. This will help ensure that everyone who can give an insight as to what had happened is interviewed and is given the opportunity to make a contribution to the investigation.

Recommendation 6

As this inquest clearly demonstrates, it is vital if an effective investigation is to be completed that it be instigated and completed with due expedition after the death of any civilian and especially when that death occurs at the hands of agents of the State.

Recommendation 7

All log books kept in respect of any operation should be bound and the pages numbered sequentially. The TCG should always keep its own log book.

W. FURTHER THOUGHTS

[336] It is important to be realistic as to what can be accomplished at an inquest. The longer the gap between the death and the inquest the more difficult it becomes to determine what actually happened and how that death occurred. In this case the gross and inordinate delay of nearly a quarter of a century makes it almost impossible to reach any conclusion on the balance of probabilities about what

actually happened on that afternoon in November 1992. This is a most unsatisfactory outcome. Both sides will have reason to feel disappointment. I cannot emphasise the importance for the future of the prompt investigation of any suspicious death, especially one in which there is suspected involvement of the security forces. The sooner such inquests are held the better for all parties. The rule of law and justice demand no less.

[337] My final thought is this. Regardless of the outcome of this inquest, the more case law I have read and the more statistics I have studied, the clearer it has become that placing armed police in highly charged conditions will almost inevitably lead on occasions to the loss of innocent civilian life. The police, no matter how well trained or how experienced, will be required to make instantaneous life or death decisions about whether to shoot. Sometimes they will make the wrong decisions with tragic consequences. But what should not be forgotten is that the presence of armed police such as the HMSU on the streets of West Belfast was a direct response to sustained terrorist activity, which was in large part due to a campaign of extreme violence waged by PIRA against the State, its security forces and its citizens.