

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

HORNER J

INTRODUCTION

[1] There are two issues arising out of my judgment which require to be resolved. They are:

- (i) The meaning of Section 35(3) of the Justice (NI) Act 2002 (“the Act”) and whether it compels me to refer Officers M and Q to the Director of Public Prosecutions (“the Director”)?
- (ii) Further, and in the alternative, in the absence of any statutory requirement should I refer Officers M and Q to the Director on the basis that they may have committed criminal offences?

[2] In my judgment into the death of Pearse Jordan deceased (“the Deceased”), I reached two different conclusions about Officers M and Q. Firstly I concluded at paragraph [144] that one or both of them had edited the original logbook by removing all entries made before 5.03 pm. Secondly at paragraph [155] I concluded that they had not been truthful when they told me 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”.

[3] Accordingly there is a basis for concluding that the two officers may have committed offences, namely that they sought to pervert the course of justice and/or that they committed perjury.

[4] Counsel for the next of kin assert that I am bound by Section 35(3) of the Act to report these matters to the Director. Counsel for the PSNI, counsel for the two officers, M and Q and counsel for the Coroner in an independent submission, state this is not a correct interpretation of the relevant statutory provision.

RELEVANT LEGISLATIVE PROVISIONS

[5] Section 35 of the Act makes provision for a range of different means by which information can be provided to the Director.

Section 35 provides as follows:

“35 Information for Director

(1) Where a person is committed for trial, the clerk of the court to which he is committed must send, or cause to be sent, to the Director without delay –

(a) a copy of every complaint, deposition, examination, statement and recognisance connected with the charge, and

(b) a copy of all other documents in his custody which are connected with the charge or, if it is not reasonably practicable to copy any of them, particulars of the documents which it is not reasonably practicable to copy.

(2) Where a complaint has been made before a resident magistrate, a lay magistrate or a clerk of petty sessions, he must (whether or not proceedings have been taken on it) cause to be sent to the Director, on being requested by the Director to do so, copies of all documents in his custody which are connected with the complaint.

(3) Where the circumstances of any death which has been, or is being, investigated by a coroner appear to the coroner to disclose that an offence may have been committed against the law of Northern Ireland or the law of any other country or territory, the coroner must as soon as practicable send to the Director a written report of the circumstances.

(4) The Chief Constable of the Police Service of Northern Ireland must give to the Director information about offences alleged to have been committed against the law of Northern Ireland which are of any description specified by the Director.

(5) The Chief Constable of the Police Service of Northern Ireland must, at the request of the Director, ascertain and give to the Director –

(a) information about any matter appearing to the Director to need investigation on the ground

that it may involve an offence committed against the law of Northern Ireland, and

- (b) information appearing to the Director to be necessary for the exercise of his functions.”

DISCUSSION

[6] Section 35 imposes statutory obligations on a number of different public authorities to disclose information to the Director in circumstances which are clearly defined.

[7] It is common case that any one of the participants in this inquest, including the legal advisors to the next of kin, could refer any of the findings which were made in the course of this inquest to the Director on the basis that those findings may be indicative of criminal wrongdoing.

[8] Counsel for the Coroner, PSNI and Officers M and Q all submit that the ordinary and natural meaning of Section 35(3) is that the statutory obligation on a Coroner to make a report to the Director of criminal wrongdoing relates to an offence that appears to be disclosed by “the circumstances” of the death.

[9] The next of kin assert that because Section 35(3) mirrors Section 6(2) of the Prosecution of Offences (NI) Order 1972 which created the office of DPP in Northern Ireland, there is a statutory obligation on the Coroner to ensure that the Director is provided with information about the possible commission of criminal offences, in order that he can comply with a statutory duty to determine whether or not to prosecute. Further where the Coroner has concluded an offence “may” have been committed, then he is not permitted to exercise any discretion once that threshold has been met. Finally, the interpretation put forward by the other parties involves a strained interpretation of the section and is asking that the section should be read as follows:

“Where the circumstances of any death which has been, or is being, investigated by a Coroner appear to the Coroner to disclose that an offence which caused or contributed to the death may have been committed against the law of Northern Ireland or the law of any other country or territory, the Coroner must as soon as practicable send to the Director a written report of the circumstances.” (The words underlined have been added.)

CONCLUSION

[10] The construction put forward by the next of kin is not the natural and ordinary meaning of Section 35(3). This is because in sub-section (3) it is only “where the circumstances of any death” disclose an offence may have been committed that the obligation on the Coroner to report the matter to the Director arises. This ties in with the jurisdiction of the Coroner and the purpose of the inquest. It is confined to the investigation of the death. A Coroner does not enjoy any general free-standing powers in respect of breaches of criminal law. Accordingly, the statute confines those circumstances specifically to the death which the Coroner is investigating. If the Coroner concludes that an offence arises in relation to the circumstances of the death then he must make a report to the Director. I accept that “circumstances” should be generously construed.

[11] The construction put forward by the next of kin requires the words “where the circumstances of any death” to be ignored and for the Coroner simply to be required to report any wrongdoing to the Director disclosed during the course of an inquest.

[12] Furthermore the interpretation put forward by the next of kin produces an absurd outcome that can easily be demonstrated in the present case. If the next of kin’s submission is taken to its logical conclusion, then I, as Coroner, would be bound to report, inter alia:

- (a) The owner of the Orion which had a defective rear tail light.
- (b) DP2 who may have been involved in the hijacking of the Orion.
- (c) The civilian witnesses who gave false testimony about the police assaults on the deceased prior to his death.

[13] In response to this the next of kin say that the offences must be read as offences not including summary offences of more than six months vintage because no prosecution could now take place. Accordingly, the sub-section does not apply to offending and was not intended to apply to offending the reporting of which would be “an exercise in futility”. Thus the submission of the next of kin requires sub-section (3) to be read as follows:

“Where the circumstances of any death which has been, or it being, investigated by a Coroner appear to disclose that an offence may have been committed against the law of Northern Ireland or the law of any other country or territory the Coroner must as soon as practicable, send to the Director a written report of the circumstances, **except where to do so would be futile.**” (Emphasis added.)

This submission does not bear on the other more serious offences which I have referred to such as perjury but which do not relate to the circumstances of the death.

[14] The purpose of the Coroner is to investigate the circumstances of the death of the Deceased. I can well see how the purpose of the Coroner will require him or her to report any wrongdoing revealed in those "circumstances". I cannot see any good reason in imposing a requirement on a Coroner to report wrongdoing which does not relate to the circumstances of the death but which is revealed in the course of an inquest. Of course, a Coroner may choose to report such wrongdoing, but no good reason has been offered, and I am unable to think of one, as to why such a compulsion should be placed upon him.

[15] Accordingly, I have no hesitation in concluding that the correct construction of Section 35(3) only places a requirement on a Coroner to make a report to the Director where the circumstances of the death he is investigating discloses that an offence may have been committed against the law of Northern Ireland or the law of any other country or territory. I do not consider that I am bound by statute to report Officers M and Q, or for that matter the civilian witnesses, for the potential criminal wrongdoing uncovered in the course of the inquest. I do not consider that the "circumstances of the death", no matter how generously construed, could capture the offending of which Officers M and Q might be guilty.

THE PRESENT CASE

[16] For the reasons which I have given I do not consider that I am bound by section 35(3) of the Act to report Officers M and Q to the Director. However, in the present case I intend to exercise my discretion and report Officers M and Q to the Director because I consider that their behaviour sought to conceal the role played by DP2 in the events of 25 November 1992. This attempted concealment could have seriously impacted on this hearing.