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(subject to editorial corrections)*

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

Officers C,D,H and R's Application [2012] NIQB 62
Officer A's application [2012] NIQB 62
Jordan's Application [2012] NIQB 62

2012 No. 3812/01

IN THE MATTER OF AN APPLICATION BY OFFICERS C, D, H and R, SERVING AND RETIRED MEMBERS OF THE ROYAL ULSTER CONSTABULARY AND THE POLICE SERVICE OF NORTHERN IRELAND FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

2012 No.

IN THE MATTER OF AN APPLICATION BY OFFICER A FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

BOTH IN RESPECT OF DECISIONS OF THE CORONER FOR BELFAST IN THE INQUEST TOUCHING ON THE DEATH OF PATRICK PEARSE JORDAN

AND IN THE MATTER OF AN APPLICATION BY HUGH JORDAN FOR LEAVE TO APPLY FOR JUDICIAL REVIEW OF DECISIONS TAKEN BY THE CORONER IN RESPECT OF AA, AB, B, E, F, M AND Q FORMER OFFICERS OF THE ROYAL ULSTER CONSTABULARY

(Anonymity and Screening).

DEENY J

SECTION I Preliminary

[1] Hugh Jordan is the father and next of kin of Patrick Pearse Jordan who was shot dead by a police officer in 1992. These applications relate to twelve serving or former police officers due to give evidence at the inquest into his death. No criminal proceedings resulted in respect of his death. An inquest into his death commenced on 4 January 1995 but was adjourned repeatedly over a number of years pending the resolution of legal proceedings. In 2001 the European Court of Human Rights concluded that the inquest procedure, in particular by the restrictions on any findings of criminal liability under the Coroner's Act (NI) 1959 and the Rules thereunder failed to give effect to the procedural investigative duty under Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Thereafter the Coroner attempted to resume the inquest in accordance with existing provisions. However, further judicial review proceedings followed in which Mr Jordan challenged, inter alia, the Coroner's decision that a verdict of unlawful killing would not be available to the jury whose determination would be confined to a brief neutral statement. That claim was refused at first instance. On appeal the Court of Appeal in Northern Ireland concluded that the Act and Rules interpreted as meaning that the jury should find "by what means and in what circumstances" the deceased came to his death were sufficient without a verdict of unlawful or lawful killing. An appeal from that decision was dismissed by the House of Lords in Jordan v Lord Chancellor and Another [2007] 2 AC 226 where it was held that there was no prohibition on the jury finding facts directly relevant to the cause of death which might point to the existence of criminal liability and where their findings indicated the commission of a crime or the Coroner considered that an offence might have been committed, he would be obliged to report that matter to the relevant prosecuting authority, but, by a majority, a verdict of unlawful or lawful killing or an expression of opinion on criminal or civil liability was not open to the jury. It was further held that the police were under a continuing duty to supply information to the Coroner.

In Re Brigid McCaughey & Anor for Judicial Review [2012] 1 AC 725; [2011] UKSC 20 the Supreme Court, following the decision of the Grand Chamber of the European Court of Human Rights in Silih v Slovenia (2009) 49 EHRR 996, found, in the words of Lady Hale:

> "if there is now to be an inquiry into a death for which the State may bear some responsibility under Article 2, it should be conducted in an Article 2 compliant way."

[2] Subsequent to Jordan the Senior Coroner for Northern Ireland attempted to resume the inquest. There were a series of preliminary hearings and at a number of these the anonymity of police and former police witnesses was discussed. The Senior Coroner adopted a procedure but it was the subject of a judicial review challenge which was conceded by the Senior Coroner in February 2009. As appears from the affidavit of Fearghal Shiels, solicitor for the applicant Mr Jordan at paragraph 8:

> "A new Anonymity Protocol (sic) was put in place to govern all Inquests, a copy of the Protocol, is attached and exhibited as FS1 Tab 1 pages 1-5. As appears the Protocol permits that any party opposed to a provisional decision can make written representations outlining their grounds for opposition and thereafter an oral hearing is held before a final decision is reached."

The conduct of the inquest in October 2009 was transferred to Mr Coroner Sherrard and a slightly different version of the Anonymity and Screening Procedure, as it is called, is exhibited to the papers in these proceedings dating from November 2009. Various further delays regrettably then occurred into which I need not go. Suffice it to say that the Procedure was operated by the Coroner. That involved him making provisional decisions which were disclosed to what for convenience I will call the parties. They were then given the opportunity to make further submissions and on 29 June he made a series of rulings. C, D, H and R were all refused anonymity. Since then A, the sergeant of police who actually shot the deceased has also been refused anonymity. They challenge the Coroners rulings in two of these applications. Mr Jordan, or his legal representatives, bring their application before the court to challenge the grant of anonymity to officers AA, AB (currently provisional), B, E, F and M granted on 29 June. I gave them leave to amend their Order 53 statement by adding Q to whom anonymity was granted over the summer. Following this decision of 29 June both the officers who were not getting anonymity and Mr Jordan challenged the Coroner's decision. An Order of Gillen J of the 4th day of July gave directions for the exchange of skeleton arguments and affidavits. As the inquest was finally listed for commencement on 12 September 2012 I agreed to sit in the vacation on 28 August to hear the matter in the hope of providing a judgment which would allow the inquest to proceed.

[3] Ms Karen Quinlivan Q.C. appeared with Ms Fiona Doherty for the next of kin (although Ms Doherty does not appear in the substantive inquest). Mr Turlough Montague QC appeared with Dr Tony McGleenan QC for the Chief Constable and for AA and AB. Mr Kevin O'Hare appeared with Mr David Scoffield QC for Officers (or ex-Officers) A, C, D, H, R as applicants and B, E, F, M and Q as Notice Parties. Professor Sean Doran appeared for the Coroner. I am grateful to counsel for the written and oral submissions which they delivered. These have been considered and taken into account even if all are not expressly referred to in this judgment.

[4] At the request of counsel and with the agreement of all parties I agreed that the hearing on Tuesday 28th would deal with two preliminary points which had emerged. The first of these was the submission on behalf of Mr Jordan that I should not look at the unredacted material which the Coroner had seen when arriving at his decisions. In the event counsel for the other three parties were content to let me conduct the judicial review without looking at the unredacted material. It was the submission of the next of kin that if I did so they would be entitled to see it. Counsel did say that of course if I felt the necessity to do so in the course of the hearing the

matter could be revisited. I do not find this entirely satisfactory but given the need for expedition I accepted that consensus view. However Ms Quinlivan made it clear that the next of kin still maintain the closely related point that the Coroner should not in fact have seen unredacted material which had not been seen by the next of kin. The next of kin or his legal representatives contend that they are entitled to see all the material which the Coroner has seen. In the interests of dealing with the matter therefore and not wanting to lose the day that had been set aside, albeit in the vacation, I proceeded to hear the submissions of Ms Quinlivan and the other parties in respect of this point. I shall return to that in a moment. The second point which had arisen is that the Security Service, which had provided confidential security risk assessments for each of the serving or former police officers seeking anonymity, had not been able to confirm to the Coroner that their assessments of June were still valid in September. One conceivable consequence of this would be to adjourn the proceedings until the Security Service updated their assessments. The decision being challenged is the decision of the Coroner based on the earlier material. It rather blurs the nature of judicial review, even in a human rights case, if the judicial review judge makes the decision, effectively on the merits, in the light of material that was never seen by the decision-maker. In any event the Security Service were unable to say when any updated assessments would be provided. I am not aware of any dramatic change in the security situation since June. It seems to me that the proper course is for me to proceed to deal with the decisions as made. If the Coroner receives an updated security assessment which causes him to alter any of the decisions he made on or after 29 June that can be communicated to me and I can take that into account i.e. as a revised decision which the parties can be given leave to challenge in so far as appropriate.

[5] On 13 August 2012 I directed the parties be informed that I would deal with the matter on the basis of a rolled up hearing of both leave and substantive matters given the imminence of the inquest and the length of time since the death of Patrick Pearse Jordan. The court sat on August 28th, September 5th, 6th and 7th and Monday of this week.

<u>SECTION II</u> Principle of Redaction by Coroner.

[6] The Coroner operated, or as Ms Quinlivan would say, purported to operate, the Procedure for applications by a witness for anonymity and/or screening. As I have said that of 4 November 2009 to which I will refer is, I was told by counsel, effectively the same as that of June 2009. One looks at the Procedure bearing in mind the point that is being taken here by the next of kin's lawyers. At paragraph 2(3) of the Order 53 statement they seek:

> "A Declaration that a procedure which permits of secret written submissions, supported by heavily redacted documents, in support of applications for anonymity, is unlawful."

Paragraph 1 of the procedure provides for an application by anyone seeking anonymity and/or screening at which stage they only provide their name and address to the Coroner. Obviously the purpose of such an application would be immediately defeated if such information was made available more widely. Upon receipt of the same the Coroner seeks a risk assessment from the PSNI. In the course of time the responsibility for this was transferred, at least in part, to the Security Service. At paragraph 3 the Coroner sends a copy of that risk assessment to the applicant who within 14 days submits a written statement of the grounds relied on by him with supporting documentary material for the relief sought; such information should only be as "necessary in order to determine the application." Paragraph 4 expressly says that "each application shall be confidential and shall not be disclosed to anyone other than the Coroner." Paragraph 5 reads as follows.

> "Each applicant shall also prepare, and submit to the Coroner a second copy of his/her application redacted to the extent necessary to prevent jeopardising the applicant's anonymity (hereinafter referred to as a `redacted application'). If the Coroner forms the view that any redaction is not necessary to prevent jeopardising the applicant's anonymity he shall write to the applicant or his/her legal representatives and require the applicant to submit a revised copy of the redacted application omitting any redaction or redactions considered unnecessary by the Coroner."

Paragraph 6 allows the applicant to challenge the Coroner's opinion on issues of redaction.

> "Any such representations made under this paragraph shall remain confidential and shall not be disclosed to anyone other than the Coroner unless otherwise ordered by a court of competent jurisdiction."

Paragraph 7 requires the applicant to send the redacted statement to the other interested parties. Paragraph 9 enables the Coroner to make a provisional decision in writing. This is sent to the parties and under paragraph 11 if any properly interested person is opposed to the grant of the application they may make representations. The Coroner will then review his provisional decision and make "the decision". After the decision a further level of protection is granted to all concerned by allowing those disappointed on either side to make oral representations. Paragraph 16 reads.

> "At the hearing of any oral representations under paragraphs 14 and/or 15 the Coroner shall, provided and to the extent that this can be done without jeopardising the applicant's anonymity, afford properly interested

> persons and their legal representatives an opportunity to be heard and to make oral representations. How much such persons can be told and to what extent there can be an inter partes hearing will have to be decided in the light of the issues to be considered. The aim will be to adopt a flexible approach so as to facilitate proceedings and a decision which is fair to all parties without prejudicing the anonymity of the applicant."

After any oral representations the Coroner will review his decision and issue a reviewed decision. By paragraph 18 such a decision can be reviewed if new grounds come to light which could not reasonably have been advanced at an earlier date. The passage underlined, part of the Procedure assented to by the next of kin clearly runs strongly against his contention now, or that of his lawyers, that he should see everything the Coroner sees.

[7] In this case the final decision of the Coroner of 29 June was after such oral submissions on 12 June following written submissions.

[8] Mr McGleenan QC for the Chief Constable took an initial point against the next of kin here. As is clear from my quote from the Order 53 statement they are challenging the procedure itself. But he pointed out that this procedure was the fruit of lengthy submissions by all those concerned including the very solicitors and counsel now representing the next of kin. Not only that but as Mr Shiels properly exhibited to his affidavit Mr J L Leckey, the Senior Coroner for Northern Ireland, wrote on 22 June 2009 to the parties. I shall quote the short letter in full.

> "Dear Sirs
> Following your representations I have redrafted the screening and anonymity procedure and a copy is enclosed. Any applications for screenings and/or anonymity must be submitted no later than the date specified i.e. 7 July 2009.
>
> If it is your intention to challenge this revised procedure by way of judicial review please do so promptly in the interests of good administration rather than wait until after the procedure has been operated and concluded.
> Yours faithfully"

Rather than challenging the procedure by way of judicial review promptly the next of kin has waited 3 years to do so. Mr McGleenan asked me to exercise my discretion against him on this basis. There is if I may say so an even more elementary point that a judicial review application should be brought within 3 months of the decision complained of pursuant to Order 53 of the Rules of the Court of Judicature i.e. within three months of June 2009.

[9] It seems to me that the next of kin or those advising him have been guilty of reprehensible delay, if there was any merit in their submissions on the procedure. Mr McGleenan also said, without contradiction from counsel for the next of kin, that this procedure had been operated in the Mallon inquest by Weir J sitting as a coroner and in the McCaughey and Grew inquest, also a matter which has been considered in the Supreme Court.

[10] Ms Quinlivan in reply relied on two factors as "the trigger" for their application. Firstly was the decision of the Supreme Court of the United Kingdom in Al Rawi v Security Service et al [2011] UK SC 34.

I shall say a word about this decision in a moment but I note that it was delivered on 13 July 2011. It was the duty of any reasonably careful legal advisor to the next of kin who considered it to be contrary to the procedure which they had hitherto accepted to raise it at that time. That was not done. It was not done for almost exactly a year. While I accept the candour of counsel in saying she was not aware of it it does not seem to me that inadvertence, perhaps surprising, particularly as it apparently extends to the other senior who appears with her in the substantive inquest, can justify a failure to bring proceedings based on that decision of the Supreme Court of a year ago. The second justification advanced which is coupled with Al Rawi and which I consider with it is that they were not aware at that time how heavily the Coroner might redact the material being put forward by the applicants for anonymity. They only became aware of this when someone emailed to their solicitors a personal statement from Officer E. This was copied onto counsel who read it but only realised that it was accidently unredacted when she received a hard copy which was heavily redacted. This is the second part of the trigger. It therefore falls to me to consider the redactions to Officer E's personal statement. I note that this is what it is and not the security assessment i.e. it is his personal statement of the reasons for seeking anonymity. I am inclined to accept Ms Quinlivan's submissions that there has been excessive redaction at paragraph 3(1), (2) and (3) of the personal statement although part of 3(2) was disclosed and I think some part of 3(1) might also have been withheld. Other matters it seems to me were rightly redacted within the range of reasonable discretion by the Coroner.

[11] With regard to delay I do note that the Coroner himself while regretting the delay says that the major contributor to it was the late receipt of threat assessments. I take that into account and in the circumstances consider the delay in bringing the proceedings a factor in the overall approach rather than dismissing them at the leave stage solely for that reason. In any event it would not be appropriate to dismiss all the proceedings set out in Mr Jordan's Order 53 statement.

[12] The main plank of the application by counsel for the next of kin is that the procedure which they had earlier assented to was now to be viewed as unlawful because of the decision of the House of Lords in Al Rawi & Ors v Security Service & Ors op cit. There the Supreme Court (by a majority of 7-1) held that Parliament

alone could introduce a closed material procedure as envisaged by the preliminary issue as a replacement for the existing common law process for dealing with claims for public interest immunity in ordinary civil claims for damages. It was not open to the court to do so and it was contrary to the principles of open justice and natural justice. The defence there had argued that there were 250,000 documents to be assessed which made PII impracticable and a closed material procedure should be adopted in the action brought by the complainants for damages against the defendants. Counsel for the next of kin in their skeleton argument in support of this point quoted three paragraphs from the judgment of Lord Kerr of Tonaghmore. However the first answer to their point is to be found in one of the sentences highlighted in bold in that skeleton argument.

> "The seemingly innocuous scheme proposed by the appellants would bring to an end any balancing of, on the one hand, a litigant's right to be apprised of evidence relevant to his case against, on the other, the claimed public interest."

It can be seen therefore that Lord Kerr is speaking about a litigant and his case, not about an inquest.

[13] At paragraph 93 (again in bold in the skeleton argument) Lord Kerr said the following.

> "Evidence which has been insulated from challenge may positively mislead. It is precisely because of this that the right to know the case that one's opponent makes and to have the opportunity to challenge it occupies such a central place in the concept of a fair trial. However astute and assiduous the judge, the proposed procedure hands over to one party considerable control over the production of relevant material and the manner in which it is to be presented. The peril that such a procedure presents to the fair trial of contentious litigation is both obvious and undeniable".

Again it is perfectly obvious that His Lordship is not speaking of an inquest or inquiry. Nor do I think that the language used by Lord Kerr is in any way inadvertent. That would be surprising in any event. But I note he presided in our Court of Appeal in Re A's Application [2009] NICA 6. Sitting with him were Higgins LJ and Girvan LJ. Girvan LJ in a partly dissenting judgment to which Kerr LCJ referred at several points in his own judgment reserved his position as to the anonymity of witnesses where Article 8 rights were involved, and referred to R v Davis [2008] 3 All ER 461. I set out the (second) paragraph 33 of his judgment.

> [33] Having regard to the conclusions which I have reached it is unnecessary to consider the issue of the potential impact of article 8 on the outcome of this appeal. This was an issue which was not really explored in the course of the appeal. The appellants wish for perfectly justifiable reasons to keep private their past associations with the Army. A refusal of anonymity impacts upon their privacy and their private lives. In R v Davis [2006] 1 WLR at 313 Judge P considered that exposing witnesses to the danger of retaliation engages article 8. The House of Lords in its decision did not deal with article 8. It concluded that the accused's right to a fair trial required that a defendant should be confronted by his accusers in order that he might cross-examine them and challenge their evidence. This pointed to the necessity of withholding anonymity in order to safeguard the rights of the accused under article 6. Had article 8 been in issue the requisite necessity would be established for the purposes of article 8.2. Such considerations as arose in R v Davis do not arise in an inquiry in which there is no trial and no accused and the inquiry is inquisitorial (see Lord Bingham's reference to anonymity in inquests at paragraph [21] of his speech [2008] 3 All ER 461.) If article 8 is engaged the question would arise as to whether the necessity for revealing their past Army associations had been established. Had I come to a different conclusion on the other issues in the appeal further argument on the question of article 8 would, in my view, have been necessary. I consider that before the Inquiry reaches a final decision on the question of anonymity it would need to address the issue."

I consider it unlikely that Lord Kerr overlooked this drawing of the distinction between a trial and an inquiry. See also the judgment of Lord Dyson at paragraphs 12, 31, 62 and generally. I respectfully agree with the comments of Girvan LJ with regard to the decisions and those of Lord Bingham set out at paragraph 21 of his judgment in R v Davis.

> "[21] The House has approved the admission of anonymous written statements by a coroner conducting an inquest: see *Devine v A-G for Northern Ireland* [1992] 1 All ER 609, [1992] 1 WLR 262. But, as Lord Lane CJ pointed out in the transcript of his judgment of the court in *R v South London Coroner, ex p Thompson* (1982) 126 SJ 625, an inquest is an inquisitorial process of investigation, quite unlike a criminal trial; there is no indictment, no prosecution, no defence, no trial; the procedures and

> rules of evidence suitable for a trial are unsuitable for an inquest: see *R v HM Coroner for North Humberside and Scunthorpe, ex p Jamieson* [1994] 3 All ER 972 at 983-984, [1995] QB 1 at 17. Above all, there is no accused liable to be convicted and punished in that proceeding."

[14] One might say a word more. It might be thought that the substantive right to life, whether at common law or under Article 2 of the European Convention, was of greater importance than the adjectival right pursuant to Article 2 to ascertain how someone died in the past. It would be entirely wrong if an inquest into how a person died inadvertently led to the death of another person by the unnecessary disclosure of personal information. One might think that the right to life of present and former police officers was more important than the adjectival right of the next of kin of Pearse Jordan to know the circumstances in and surrounding his death. What seems to me clear beyond peradventure, however, is that the right to life of the officers by not being unnecessarily identified is of greater importance than any supposed interest the next of kin have at the preliminary stage of the Coroner's consideration of anonymity. It seems to me quite wrong that an applicant for anonymity could potentially expose himself to a greater risk by disclosing personal matters to the Coroner in the hope of getting anonymity which are then passed on to a wider audience. In fact there is some evidence for thinking that the applicants here, certainly to judge by Officer E, adopted a measure of caution in what they said. This has been vindicated by the fact that his personal statement was unfortunately disclosed in an unredacted form and by the application that the next of kin are now embarked on, claiming the right to see such personal statements in unredacted form. Suffice it to say that for these purposes it seems to me an untenable argument that any increased risk should be caused to former or serving officers by the actual assessment of the extent of their right to anonymity.

[15] I also endorse the view formed by the Coroner and stated by him at paragraph 3 of his general decision of 29 June 2012 that Al Rawi is clearly to be distinguished because the material to be kept secret there was going to the heart of the substantive case between the parties that had to be considered by the court. Clearly that is not true of what the next of kin are seeking here. I shall turn in due course to what interest they have in the non-anonymity of the witnesses at the substantive hearing. But it cannot be disputed that this assessment of anonymity does not go to the heart of the whole case but is essentially ancillary.

[16] It is also worth pointing out that it is ancillary to an inquest. We have Lord Bingham's comments in R v Davis above. I respectfully agree that in the prosecution of persons charged with criminal offences a public appearance by police officers would clearly remain the norm and in all likelihood thus also for civil claims. But the Coroner's Court is an inferior tribunal to the High Court. A criminal prosecution on indictment usually puts the defendant's liberty at least at risk and, particularly for murder or manslaughter, may result in the imprisonment of one or more persons for many years. A civil claim may lead to the enrichment of one or the bankruptcy

of another. An inquest or inquiry is different and clearly less immediate in its consequences. It may lead to a trial or civil claim. It may not.

[17] I am mindful of the role of such inquiries. The matter has been helpfully summarised by Lord Bingham in R (Amin) v The Home Secretary [2003] 4 All ER 1264; UKHL 51 at paragraphs 30 and 31.

> "[30] A profound respect for the sanctity of human life underpins the common law as it underpins the jurisprudence under arts 1 and 2 of the convention. This means that a state must not unlawfully take life and must take appropriate legislative and administrative steps to protect it. But the duty does not stop there. The state owes a particular duty to those involuntarily in its custody. As Anand J succinctly put it in *Nilabati Behera v State of Orissa* [1993] 2 SCR 581 at 607: 'There is a great responsibility on the police or prison authorities to ensure that the citizen in its custody is not deprived of his right to life.' Such persons must be protected against violence or abuse at the hands of state agents. They must be protected against self-harm (see *Reeves v Comr of Police of the Metropolis* [1999] 3 All ER 897, [2000] 1 AC 360). Reasonable care must be taken to safeguard their lives and persons against the risk of avoidable harm.
>
> [31] The state's duty to investigate is secondary to the duties not to take life unlawfully and to protect life, in the sense that it only arises where a death has occurred or life-threatening injuries have occurred (see *Menson v UK* [2003] ECHR 47916/99). It can fairly be described as procedural. But in any case where a death has occurred in custody it is not a minor or unimportant duty. In this country, as noted at [16], above, effect has been given to that duty for centuries by requiring such deaths to be publicly investigated before an independent judicial tribunal with an opportunity for relatives of the deceased to participate. The purposes of such an investigation are clear: to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."

I observe that the rectification of dangerous practices is not very likely here after the passage of 20 years.

[18] I also note the matter set out by the learned Coroner at paragraphs 4 and 5 of his general ruling.

> "4. The anonymity process in Jordan does not bear on the substantive issues to be determined and will not hinder the ability of the participants to fully participate in the hearing. Neither can the anonymity process be seen in isolation from the other reassurances made available to the next of kin in the course of preparation for the inquest such as the disciplinary records and antecedents of the applicants which serve to provide background for examination. Unfortunately we continue to live in a community in which police officers and former police officers are under threat from terrorist organisations. This has been clearly evidenced in recent years by a number of horrific attacks. Against that background, bearing in mind the need for extreme caution in order not to expose individuals to attack, an element of secrecy is inherent in these applications. I am also of the view that the language of the assessments, which has been criticised by the legal representative for the next of kin as being imprecise and conditional, is an inevitable feature of this process. The Security Service is assessing risk. I do not consider this to be an exact science and the language of the assessments is acceptable given the circumstances.
>
> 5. Every effort has made to minimise secrecy by providing the legal representative for the next of kin with the application and redacted personal statement and risk assessment. Observations have been made by legal representatives for the next of kin surrounding the nature and extent of the material being redacted. I have reassured myself that all redactions are appropriate when weighed against the potentially catastrophic risks associated with inappropriate disclosure. While the personal statements are often anodyne in character where I have taken particular statements are often anodyne in character where I have taken particular account of a matter raised I have made public note of it. In light of the concerns raised by the legal representatives for the next of kin I will release to them details as to whether the applicant is still a serving officer. I have, of course, already taken this factor into account in my decision making process."

[19] It can be seen from that that the next of kin here have been given a considerable degree of information. It is not that they have been completely shut out of the process. As already pointed out they were heavily involved in the development of the procedure applied by the Coroner. It seems clear to me that they have been given the gist of the material before the Coroner.

[20] Reinforcement for that may be found in the willingness of the other parties to let me decide the substantive issues of this judicial review without seeing the unredacted material myself.

[21] Separate and more substantial support for it can be found in the decision of the Supreme Court in Tariq v Home Office [2011] UKSC 35. Mr Tariq was a civil claimant who was a UK citizen and a Muslim of Asian ethnic national and racial origins. He was employed by the Home Office as an Immigration Officer. Following the arrest of close family members in the course of a suspected terrorism investigation his security clearance was withdrawn and he was suspended from work. He brought a claim to an employment tribunal which assessed some of the information on which the Home Office had acted with the assistance of a special advocate appointed by the Attorney General under Rule 8 of the Employment Tribunals (National Security) Rules of Procedure 2004. On this issue the claimant cross appealed from a decision of the Employment Appeal Tribunal, dismissing his appeal, on the basis that these regulations and his exclusion were in breach of E.C. Directives. By 7-1 the Supreme Court rejected that. In effect they said that it was enough in a case involving national security in the context of employee rights for the employee to be given the gist of the allegations against him. The provision of the gist of allegations is not confined to the field of national security. In Damien Neil's Application [2009] NIQB 25 a probationer constable judicially reviewed his discharge from the police because he was not told of the confidential information from intelligence materials on which the Assistant and Deputy Chief Constables made their decision. I held, in the light of the case law, that he should have been provided with the sort of redacted information with which the court was provided at the hearing of the case. His counsel did not contend nor would I have held that he could see everything. Pauline McKimm v South and East Belfast Health and Social Services Trust [2005] NIQB 32 is a further example of redacted material. There an employee of the defendant in a care home was assaulted by a boy in care. His personal files were redacted by counsel for the Trust to what was possibly relevant and then the court selected from those such matters as should be disclosed to the plaintiff in her civil action against the Trust on the basis that it was necessary for her to see those and that her right to see the redacted material prevailed over the Article 8 rights to privacy of the child. See also Finn (a minor) v McKee [2005] NIQB 79. In this case I am satisfied as a separate and supportive ground that no prejudice has been caused to the next of kin because they have been given a considerable amount of information with various safeguards as outlined by the Coroner, a generous gist.

[22] Furthermore it seems to me that if I am considering the proportionality of the Coroner's decision his decision is clearly right in proportionate terms. Risk could be

caused to the police officers, by the disclosure of unredacted material with no sufficient need or concomitant benefit to the next of kin in receiving the same.

[23] The Data Protection Act 1998 governs the disclosure of personal data. Among the exceptions to a general prohibition on the disclosure of sensitive personal data are that it is "required" by law or "necessary" in the course of legal proceedings; s.35; Schedule 2. Here the next of kin have been given ample opportunity to make submissions on anonymity. It is possible that if they saw all the unredacted material they might alter those submissions. But the safeguards already in place and outlined by the Coroner and the fact that this is an ancillary matter relating to the Coroner's conduct of his own court, which is neither trying a man nor bringing in an award of damages all mean, with the material above that it is <u>not necessary</u> to have such disclosure in these circumstances.

[24] I further observe that the Inquiries Act 2005 does provide at Section 18 for public access to inquiries. But it goes on to Section 19 to provide that public access may be restricted as may the disclosure or publication of evidence or documents. That is clear statutory authority for the proposition that there may be a restriction on disclosure in a public inquiry, an analogous proceeding to an inquest. I further point out that that would be the case even if the evidence or documents were going to the heart of the inquiry, as opposed to be merely secondary as here, although no doubt that it is a decision to be made with care and in the light of the case law.

The Coroners Act of 1959 has no similar power or provision. But one cannot imply from that, I find, any intention on Parliament's part to distinguish between public inquiries and inquests. Huge developments in the law including the incorporation of the European Convention in our domestic law have occurred in this field in the last 53 years. Rather than the absence of any such provision in the 1959 Act leading to any conclusion similar to the applicability of the maxim expressio unius est exclusio alterius (which would not be applicable in any event) I rather think that it is paradoxical and unlikely to be correct that you can have restriction on the disclosure or publication of matters in an inquiry under the Inquiries Act but not in an inquest.(I say nothing about closed hearings.) Indeed it has now been established by the courts that such anonymity can be granted where appropriate.

[25] In making these remarks I do not in any way seek to derogate from the general principle of open justice. But I find the suggestion that the initial or ancillary process of deciding whether somebody should have anonymity itself abandons any opportunity for the Coroner to see matters on a confidential basis is quite untenable in justice and on authority. I refuse leave therefore for that aspect of the judicial review claim.

[26] I find that the Coroner's Court has the power, without statutory authority, to put in place a procedure governing the grant of anonymity and screening for witnesses appearing at inquests. Such a procedure may lawfully permit the receipt of confidential information seen only by the Coroner to assist him in discharging his duties. The next of kin is not entitled to see all of the confidential material received. The procedure is not fundamentally unfair nor inconsistent with the decision of the

Supreme Court in Al Rawi op.cit. I shall consider in due course whether the Coroner was in breach of the procedure by permitting an over-redaction of documents and what should flow from that.

SECTION III Assessment, Cross-examination and Delay.

[27] A matter going to redaction and to the general issues which might conveniently be dealt with here is the contention by the next of kin that the Coroner should have subjected the Security Service risks assessments to an examination including some kind of examination of the independence of the Security Services. Given that this is not a criminal trial but an inquest and given that the issue of anonymity is an ancillary matter which does not go to the heart of the issue as to how Pearse Jordan came to be shot it seems to me that there should be no duty in law on a coroner to start satellite inquiries as to the independence of the persons charged by law with protecting the public from terrorism and adjectively providing risk assessments, where appropriate, of the risk that certain persons may be under. No authority was cited to justify such a proposition. It seems to me that the submission that he should do so is illustrative of an over importance being given to the inquest procedure. It is further an illustration of an unrealistic and indeed dangerous tendency to endlessly prolong legal proceedings. Who would carry out such an assessment? Would the choosing of the body or person to carry out such an assessment be the subject of agreement of a procedure allowing the next of kin a right to make written and oral submissions? Would the decision of the person or body commenting on the independence of the Security Service be subject to judicial review by the next of kin? Would that report be disclosable or not? How much time would be lost in such a proceeding? What resources would be exhausted?

[28] Miss Quinlivan submits that if she and those with her had the names in advance of the police witnesses they may of their own knowledge, or from inquiry, ascertain that these witnesses have been guilty of reprehensible conduct on some other occasion. That would enable them to put such matters to the witnesses when they came to give evidence. I observe, firstly, that links between some of these witnesses and other fatal shootings incidents have been established and counsel have knowledge of that. I observe secondly that it must only be a possibility at best that something might come from knowing the names of the officers. If counsel or the solicitors recognise witnesses when they come to give evidence no doubt the Coroner could allow the next of kin some time to make inquiries if they believe an officer had been the subject of judicial criticism or something of the kind. Thirdly the police have given disciplinary records of witnesses to the next of kin and I am sure that any criminal record would be divuged.

[29] The general rule as to cross-examination as to credit in criminal cases i.e. where the liberty of the subject is at risk which it is not here, and therefore likely to require a higher standard of protection for defendants, as opposed to the interests of a next of kin, provides that evidence is not admissible to contradict answers given in cross-examination as to credit. Cf Archbold, Criminal Pleading Evidence in Practice, 2012 para. 8-281. There are certain exceptions to that such as bias and previous

convictions. It is also right to note that the Court of Appeal in R v Summers [1999] Crim LR 744 observed that the rule should be applied in a flexible way. But as that court also said in R v Mendes 64 Cr App R 4, the rule had been of great practical use and had prevented the indefinite prolongation of trials which would otherwise result if there was a minute examination of the character and credit of witnesses. I respectfully agree with that view. The rule it seems to me is not solely concerned with relevance but with issues of public policy. It has been said from the time of Magna Carta that justice delayed is justice denied. That has perhaps received new vigour from the cases under Article 6 of the European Convention. Delay should apply just as much to inquests, and indeed the ECHR has so held, as to any other form of legal proceeding. The more delay in starting and finishing this inquest, the greater the delay for the many inquests still awaiting consideration. Archbold at 8-216 also deals with the judge's duty to restrain unnecessary cross-examination citing R v Kalia 60 Cr. App. R. 200, CA, approving earlier dicta and R v Flynn [1972] Crim. L. R. 428, CA.

[30] The Rules of the Court of Judicature in Northern Ireland set out at Rule 1A (1) that the overriding objective of the rules is to enable the court to deal with cases justly. Under 1A(2) examples of that are saving expense, dealing with the case in ways which are proportionate to the amount of money involved, the importance of the case, the complexity of the issues and the financial position of each party as well as ensuring that it is dealt with expeditiously and fairly. While I appreciate that the Jordan inquest is viewed as of great importance by those involved one is left with the impression that that view seems to have driven out considerations of expedition and use of resources.

[31] For these reasons I reject the contention that there is any obligation on the Coroner to look behind the risk assessment. That, of course, is a different matter from him examining it carefully and taking into account any submissions relating to the weight to be given to the assessment or aspects of it, insofar as they are disclosed to the parties. He should not be dictated to by these assessments but it is quite impracticable for him to pursue further collateral inquiry about what is already a satellite topic.

SECTION IV Over-redaction

[32] It is convenient to deal at this stage with one further discreet complaint made on behalf of Hugh Jordan and expressed at paragraph 3(ix) of the further amended Order 53 statement. As set out at paragraph 6 above the Coroner receives a redacted personal statement from an applicant for anonymity and screening but if he forms the view there is unnecessary redaction he shall write to the applicant and require them to submit a revised copy of the redacted application. The applicant can then make representations about such a request. The redacted statement is then forwarded to the other parties. As mentioned above it appears that the Coroner's Office inadvertently emailed an unredacted personal statement on behalf of Officer E to Madden & Finucane who passed it onto their counsel without reading it. Ms Quinlivan only appreciated that it had been inadvertently sent to her when she subsequently received a hard copy which had been properly redacted. She then

quite properly returned the unredacted copy to the sender. On comparing the two copies she was able to point out that extensive matters had been redacted by Edwards & Co. These included:

(a) An account of E's involvement in the fatal incident;

(b) The fact that he was a serving officer; and

(c) That he had given evidence often in criminal and terrorist trials.

As indicated at paragraph 10 above I accept that there has been excessive redaction at paragraph 3(1), (2) and (3) of the personal statement. Is this a ground for quashing the decision of the Coroner?

[33] The uncontradicted affidavit evidence of Fearghal Shiels, Solicitor, would appear to indicate from an oral preliminary hearing that the Coroner had rather delegated this task to the solicitor without personally checking each one himself. It is correct to say therefore that he did not operate the procedure correctly; if he did check them then he permitted over-redaction. But the submission of his counsel is that no unfairness has arisen from the over-redaction. The purpose of the anonymity procedure at this point is to let the witnesses exercise their right to seek anonymity and screening but to allow the next of kin an input into the Coroner's decision, as provided for in the procedure set out above. The non-disclosure of the fact that an officer was serving rather than retired seems to me a factor that could indeed be material and ought to have been disclosed. But in his careful submissions Mr Doran for the Coroner pointed out that in Volume 2 of the exhibits to the next of kin's solicitor's affidavit one finds at pages 134, 161, 188 and 258 express references to the serving or retired status of the former RUC officers. Therefore the next of kin were on notice that some officers were serving and some had retired thus enabling them to make this point to the Coroner (although in the event he did not consider it a point of significance).

[34] The second point of potential substance was that he and perhaps others had given evidence in terrorist trials. But that factor is expressly referred to by the Coroner in his provisional decisions so that again, following those, the next of kin had the opportunity to argue that point, to the effect that therefore that reduced the need for them to have anonymity in the inquest. The third matter of the disclosure of the witness's role in the incident was of course known to them from the papers under each officer's lettered cipher.

[35] Furthermore the Coroner undertook a review of the redacted material and in a letter of 18 July 2012 set out in some detail his position. I am satisfied that the over-redaction, such as it was was neither sinister nor of enough significance to cause any unfairness to the next of kin.

I accept Ms Quinlivan's submission that an alternative solution to the problem would have been for the Coroner to have not only gone over the redacted statements but to have sent amended redacted statements to the other parties. I observe however that according to the procedure itself he would have had to allow the

applicants for anonymity to have had an input into the amended redaction. In all the circumstances I find that the course he opted to adopt was a reasonable course open to him and that the next of kin is not entitled to any further remedy.

SECTION V The approach of the Court.

[36] There was considerable debate between counsel over the 5 days of the hearing as to the approach of the court to the decisions made by the Coroner. The first thing that is clear is that the approach of the court goes beyond a traditional Wednesbury approach both in regard to the European Convention issues and to the common law test.

[37] The law applicable to the role of the court when determining issues of proportionality under the Convention is now to be found in E v Constable of the Royal Ulster Constabulary [2009] 1 AC 536. The matter is fully set out by Lord Carswell, in giving the principle judgment of the House at paragraphs 52-54. Rather than attempt a summary of that I set it out in full and confirm that this is the approach which I adopted.

> "52 It is well established in decisions since the coming into force of the Human Rights Act 1998 that the *Smith* test is not sufficient to determine an issue of proportionality under the Convention. In *Huang v Secretary of State for the Home Department* [2007] 2 AC 167, 184, para 13 Lord Bingham of Cornhill summarised the position in succinct terms:
>
> > "In the course of his justly-celebrated and much-quoted opinion in *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532, paras 26-28, Lord Steyn pointed out that neither the traditional approach to judicial review formulated in *Associated Provincial Picture Houses Ltd v Wednesbury Corpn* [1948] 1 KB 223[1948] 1 KB 223 nor the heightened scrutiny approach adopted in *R v Ministry of Defence, Ex p Smith* [1996]QB 517 had provided adequate protection of Convention rights, as held by the Strasbourg court in *Smith and Grady v United Kingdom* (1999) 29 EHRR 493."
>
> Lord Bingham set out the elements of the correct approach in *R (SB) v Governors of Denbigh High School* [2007] 1 AC 100, 116, para 30:
> *[2009] AC 536 Page 559*

> "it is clear that the court's approach to an issue of proportionality under the Convention must go beyond that traditionally adopted to judicial review in a domestic setting. The inadequacy of that approach was exposed in *Smith and Grady v United Kingdom* (1999) 29 EHRR 493, para 138, and the new approach required under the 1998 Act was described by Lord Steyn in *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532, paras 25-28, in terms which have never to my knowledge been questioned. There is no shift to a merits review, but the intensity of review is greater than was previously appropriate, and greater even than the heightened scrutiny test adopted by the Court of Appeal in *R v Ministry of Defence, Ex p Smith* [1996] QB 517, 554. The domestic court must now make a value judgment, an evaluation, by reference to the circumstances prevailing at the relevant time … Proportionality must be judged objectively, by the court …"

He further observed, at para 31, that what matters "is the practical outcome, not the quality of the decision-making process that led to it".

53 It is worth returning to the ipsissima verba of Lord Steyn in *Daly's* case. He said [2001] 2 AC 532, para 27:

> "The starting point is that there is an overlap between the traditional grounds of review and the approach of proportionality. Most cases would be decided in the same way whichever approach is adopted. But the intensity of review is somewhat greater under the proportionality approach. Making due allowance for important structural differences between various convention rights, which I do not propose to discuss, a few generalisations are perhaps permissible. I would mention three concrete differences without suggesting that my statement is exhaustive. First, the doctrine of proportionality may require the reviewing court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions. Secondly, the proportionality test may go further than the traditional grounds of review

> inasmuch as it may require attention to be directed to the relative weight accorded to interests and considerations. Thirdly, even the heightened scrutiny test developed in *R v Ministry of Defence, Ex p Smith* [1996] QB 517, 554 is not necessarily appropriate to the protection of human rights … the intensity of the review, in similar cases, is guaranteed by the twin requirements that the limitation of the right was necessary in a democratic society, in the sense of meeting a pressing social need, and the question whether the interference was really proportionate to the legitimate aim being pursued."
>
> 54 It has of course to be borne in mind that the cases to which I have referred, *Daly, Denbigh High School* and *Huang*, all concerned the compatibility of decisions of an administrative character with the Convention rights of those affected by them. Nevertheless, the essential point established by them is that the *Smith* test is insufficiently intense and that the actions of the police in the present case have to pass the test of proportionality, which must be decided by the court. The Court of Appeal [2006] NICA 37 was therefore in error in applying the *Smith* test and I propose to assess the actions of the police in the light of the evidence adduced and by reference to the correct principles."

In so far as the court is dealing with human rights under the Convention, particularly Article 2 but also Articles 8 and 10 the correct approach would appear to be that the court must itself form a view as to the proportionality of the decision once those rights are engaged. I observe that the European Court has itself held that Article 6 does not apply to this inquest. The fact that it is not a trial or "contestation" reinforces the distinction to which I drew attention earlier in this judgment.

[38] So far as the common law test where an application of human rights has not concluded the matter I shall follow the judgments of the Court of Appeal in A & Ors [2009] NICA 6. The topic is dealt with by Kerr L C J at paragraphs 36 and 37. The factors listed by him at paragraph 36 are all applicable here with the additional factor that the next of kin does wish to cross-examine the witnesses here and suggest that it is possible that they would be assisted in doing so if anonymity was denied. I also take into account the comment of Higgins LJ at paragraph 14 with regard to the capacity of the court itself to deal with those aspects of the case touching on the fairness of dealing with persons who served their country during decades of violence and unrest. I also take into account the judgment of Girvan LJ at paragraphs 27 and 28. Suffice it to say that I shall view the decision of the Coroner with heightened scrutiny but not disregarding or failing to give weight to the

conclusions he reached. Ms Quinlivan helpfully also referred to the comments of Laws LJ in Re E (the Azelle Rodney inquiry) [2012] EWHC 563 (Admin). The decision-maker will be particularly well informed about and alive to the detailed aspects of this inquiry and entitled to a margin of discretion but he "has no discretion to get the law wrong" (para.25).

SECTION VI Article 2

[39] The Coroner addressed Article 2 in relation to the witnesses seeking anonymity. The next of kin alleges that he erred on one side by finding that the security assessments which suggested there was a substantial risk to some witnesses was sufficient to engage the Article 2 threshold. The officers who have been denied anonymity and screening complain on the other hand that he misdirected himself by finding that Article 2 was not engaged when their threat remained within the moderate range as assessed by the Security Services. There was considerable debate as to the circumstances, if any, in which Article 2 was engaged here. It is necessary for me to address its proper application.

[39] Article 2, Right to Life in the Convention for the Protection of Human Rights and Fundamental Freedoms reads as follows:

> "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 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."

It may well be that paragraph 2 will play a part in the substantive hearing of this inquest but for now I am concerned with the first sentence of paragraph 1.

[40] The leading case in this field is Osman v The United Kingdom [2000] 29 EHRR 243. The facts were very different from the instant case. The Osman family were subject to the attentions, the ultimately homicidal attentions, of one Paget-Lewis who shot Mr Osman senior dead and wounded his son-in-law. The issue was whether the State in the form of the police had discharged its duty under Article 2(1) to "not only refrain from the intentional and unlawful taking of life, but also to take

appropriate steps to safeguard the lives of those within its jurisdiction." At paragraph 116 the court found that the obligation must be interpreted "in a way which does not impose an impossible or disproportionate burden on the authorities. Accordingly, not every claimed risk to life can entail for the authorities a Convention requirement to take operational measures to prevent that risk from materialising." The court went on:

> "In the opinion of the court where there is an allegation that the authorities have violated their positive obligation to protect the right to life in the context of their above-mentioned duty to prevent and suppress offences against the person, it must be established to its satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably might have been expected to avoid that risk."

It was not necessary to show that the State had been guilty of willful disregard or gross negligence.

[41] The debate in this case has turned to a considerable degree on what constitutes "real and immediate risk". This was addressed in the decision of the House of Lords In Re Officer L & Ors [2007] UKHL 36; [2007] 1 WLR 2135. Mr Robert Hamill died on 8 May 1997 from injuries received during an affray in Portadown on 27 April 1997. It was alleged that the assault on him was sectarian and that several police officers in a Land Rover nearby made no attempt to intervene, and subsequently it was alleged that one officer actually obstructed the subsequent murder investigation. An inquiry was set up under the Inquiries Act 2005. Certain witnesses sought anonymity. The inquiry rejected the claims. The High Court allowed the officers' applications for judicial review and the Court of Appeal in Northern Ireland dismissed the inquiry's appeal. However the House of Lords allowed the inquiry's appeal refusing anonymity to the officers. The leading judgment on behalf of the House was that of Lord Carswell. Having set out 115 and 116 of Osman v United Kingdom op. cit. he went on:

> "20. Two matters have become clear in the subsequent development of the case. First, this positive obligation arises only when the risk is `real and immediate'. The wording of this test has been the subject of some critical discussion, but its meaning has been aptly summarised in Northern Ireland by Weatherup J in In Re W's Application [2004] NIQB 67, at [17], where he said that:
>
> > `A real risk is one that is objectively verified and an immediate risk is one that is present and continuing.'

> It is in my opinion clear that the criterion is and should be one that is not readily satisfied: in other words the threshold is high."

[42] He goes on to say that the standard is constant and not attendant upon some action that a State authority is itself contemplating. I consider that view binding upon me. Furthermore the court or the decision-maker should strike a fair balance between the general rights of the community and the personal rights of the individual. He felt it was not yet clear whether such matters as the credibility of the inquiry and its role in restoring public confidence were factors that could be taken into account. But in the light of the cases cited therein it seems to me that a decision-maker would be naturally inclined to consider those in the context of an inquiry. In Wednesbury terms it is hard not to view them as relevant considerations and it seems to me there is some read across to proportionality in that regard.

[43] In any event the issue here is the applicability of the Osman test in this case. Here the risk which concerns the witnesses is, in Mr Scoffield's submission, objectively verified in the threat assessments received. Before turning to that I would deal with one of the points raised on behalf of the next of kin. At paragraph 26 of Officer L Lord Carswell says that if "the risk has not been increased, then it is not unfair on that account to require a witness to give evidence". Later at paragraph 29 he states the following.

> "If so, it should decide whether that increased risk would amount to a real and immediate risk to life. If it would, then the tribunal would ordinarily have little difficulty in determining that it would be reasonable in all the circumstances to give the witnesses a degree of anonymity."

One of the issues raised by Ms Quinlivan is whether it is only the material increase in risk that is relevant or whether it is the cumulative threat level. In my view it is the latter, the totality of the risk that is applicable. The duty under Article 2 is to protect the life of the citizen. The only rational approach to doing so is to ascertain as best one can the overall extent of the risk to that life and if it is sufficient to engage Article 2 to consider what steps ought reasonably to be taken.

[44] For convenience I deal at this point with a further submission of Ms Quinlivan. She drew attention to the fact that the test with regard to Article 2 is one that would also be used in deportation cases. On the authority of Officer L the test of engagement would indeed be the same. But the decision-maker or subsequently a court would, in my view, be entitled, in the course of making a proportionate and reasonable decision to require a much higher level of risk to life of a foreign citizen in the United Kingdom to justify him not being deported if, for example, he himself had been found guilty of an assault on another citizen of the United Kingdom. The proportionate decision might leave one to be much more robust with such a person. One might consider that if the person is likely to be in receipt of benefits for many years in the United Kingdom, not having shown any tendency to work while

previously there that it would be disproportionate to allow him to remain in the United Kingdom, in comparison with dealing with a similar modest risk to life to a police officer who is available and willing to come forward to give evidence in the public interest but wishes to do it anonymously.

[45] I shall use the case of Officer C purely by way of illustration. He is a serving officer in the police. The PSNI, at page 259 of volume 2 of the Jordan papers state, inter alia:

> "There is no current police information to indicate a specific threat to the subject at this time. However there is a possibility that his personal security may be undermined should he be called to give evidence at the inquest in question. This may very much be influenced by the nature of the evidence he is giving, how this will be examined by the Coroner and whether or not it is considered `controversial' in nature."

The contribution of the Security Service is in a key message which I am informed is redacted from a document sent to the Coroner it reads:

> "[C] is currently assessed to be at a MODERATE threat from Northern Ireland-related terrorist groups. The definition of moderate is `an attack is possible but not likely'.
>
> Should he deliver his evidence without the benefit of screening/anonymity we cannot rule out the possibility that the level of threat to [C] may rise within the moderate threat band or beyond."

[46] The Security Service in making threat assessments has 5 categories. These are as follows:

1. Low – an attack is unlikely.

2. Moderate – an attack is possible, but not likely.

3. Substantial – an attack is a strong possibility.

4. Severe – an attack is highly likely.

5. Critical – an attack is expected imminently.

It is convenient to deal with another of the next of kin's points at this time which is set out in paragraph 6 of counsel's helpful "Issues to be determined". Are the risk assessments as formulated so vague and conditional that they could ever justify engaging Article 2? One has to bear in mind what the Security Service are doing here. They are the body now having principal carriage of dealing with terrorism, unhappily still known in this jurisdiction. They are not in the position of a doctor

advising a patient. The doctor has the benefit of a history, of clinical examination, of tests and pathology. He may well be able to advise quite firmly of the benefits of an operation but also of its side effects. Similarly counsel advising a client who bears his own costs as to the likely outcome of his own case about which he is concerned should be appraised of the relevant strengths and weaknesses which allow him to advise. The Security Service is in a very different position. They no doubt have sources of information regarding terrorism, which in this present context is principally that of dissident IRA. But we know that that intelligence is not complete or foolproof. The summary produced on behalf of the Chief Constable shows scores of terrorist incidents in recent years. It is not suggested that terrorist activity has disappeared in the last few months since the date of that report. Thus the Security Service are trying to assess what several dissident Republican or other terrorist groups may do. As Mr McCollum QC pointed out in his written skeleton argument the threat level for the community as a whole has risen from the third grade of Substantial to their fourth grade of Severe. It is therefore highly likely in their view that an attack from the dissident IRA will be made. It is evident from the Chief Constable's document that the subject of many of these attacks have been policemen. Since the case of Re Officer L two police officers have been murdered, another seriously injured and a significant number of others subject to dangerous attacks. It seems to me quite wrong to suggest that because the Security Service report, either redacted or unredacted is in general terms that it cannot and should not be relied on. I therefore reject that submission.

[47] The next of kin contend, with more substance, that a finding of a moderate risk cannot amount to the high threshold envisaged by the House of Lords. They point to the decision of Weatherup J in Re Sunday Newspapers Application (JR20) [2012] NIQB 26. At paragraph [13] we find this.

> "The updated assessment from the police is to the same effect and indicates that JR20 is considered to be at moderate risk. Thus this is not an Article 2 case as there is no real and immediate risk to JR20."

This is certainly unhelpful to Mr Scoffield's primary argument that moderate risk does meet the high threshold standard but he points out that the matter does not seem to have been fully argued before the Judge and that in any event, applying the common law test he then ruled in favour of JR20's anonymity for the reasons set at paragraphs 17 and 18 including the factor of the moderate risk although below the Article 2 level.

[48] Mr Scoffield submits that the possibility of an attack on C and others meets Weatherup J's test of a risk which is real in as much as the Security Service objectively verified and which is "present and continuing". It is present because the risk is there and it is continuing because the Northern Ireland related terrorism threat still exists. Indeed at the community level it is Severe. (Incidentally there can be no substance in the submission on behalf of the next of kin that the officers are actually better off than the community as a whole because their risk is moderate

versus severe. The latter is referring to the risk of the community as a whole sustaining an attack from terrorists where the former is specific to the individual.) It seems to me that that is indeed an arguable proposition and may show that the test in Re W does not fully address what the European Court said in Osman. The Coroner, and now myself, have to decide is there a "real and immediate risk to life" against one or more of these individuals. It is wise to look at the word risk. According to the Shorter Oxford English Dictionary the meaning of it is:

> "1. Danger: (exposure to) the possibility of loss, injury, or other adverse circumstance. … to a chance or possibility of danger, commercial loss or other risk….
>
> 2. A chance or possibility of danger, commercial loss or other risk."

[49] Ms Quinlivan argues that neither the officers who were granted anonymity because their risk was assessed as substantial nor those such as C who refused where the risk was moderate can meet the real and immediate test. But this is to misunderstand the meaning of risk. Of its very nature we are talking about possibilities.

[50] An insurer insures against the risk of a car being damaged or the driver causing injury to his passengers or third parties when driving our cars. They assess the risk of that happening and the consequences in terms of cost and then assess what premium they should charge. If you tell them you are taking your car to a race track to crash into other cars they will say that is a different matter. They insure our houses calculating the risk of houses going on fire in the United Kingdom or otherwise becoming an insurance loss. If one walks into the insurance broker's office and says that an engineer has said that one's house will probably fall down in the next 12 months one is most unlikely to be able to get insurance. Risk is about possibilities not probabilities. The risk has to be a risk to life here which clearly it is as dissident IRA attempt to murder their fellow citizens, particularly police officers and others involved in law enforcement. The risk has to be real which it is here as objectively verified by the Security Service and to an extent the Police Service of Northern Ireland also in their comments. If the relevant body, as in the Jordan application, have assessed that the threat to some may rise so that an attack is a strong possibility it seems to me that the Coroner was entirely right in concluding that constituted a real and immediate risk. (One notes that categories 3 and 4 of the Security Service assessment will inevitably overlap. There is no category of 51% probable so presumably that exists on the margins between categories 3 and 4 or falls between them).

[51] For completeness I make one further observation, reminding myself that again we are talking about the protection of human life. One element is clearly the existence of terrorists, in this society, or criminal gangs in some of the English cases who are prepared to murder in the pursuit of their activities. Secondly the individual has to be somebody who is to a greater or lesser extent a possible target of such a third party. But, thirdly, in considering the risk to life it seems to me relevant

to consider the ability of the individual at risk to deal with an attack. A youthful serving police officer in Northern Ireland will normally be armed. He will be trained in the use of the firearm. He will be updated at regular intervals. He will be spending a large part of his time with other armed officers. He will be alert to the risks to him. If he is senior in rank he will often be driven by other armed police officers. I deliberately did not ask whether retired officers in Northern Ireland generally retain their personal protection weapons but even if they do they will tend to be older than serving officers and therefore with less quick reactions. They may well not have such regular practice with their firearm. They will not be spending a large part of their time with other armed police officers thus enjoying mutual protection. It was therefore with a degree of surprise that I noted in the Coroner's letter of 18 July 2012 that while he said he had considered the issue of retirement it had not played a significant part in his calculations. It seems to me a factor that needs to be taken into account in assessing the risk to life of an individual. I shall have to return to that in particular cases.

[52] Mr Scoffield's first submission is simply that moderate risk complies with the In Re W test and constitutes a real and immediate risk. Given the terms of the judgment of Lord Carswell in Re Officer L (and the persuasive authority of Sunday Newspapers) I feel unable to accede to that application. I do take into account the comment of Lord Hope of Craighead at paragraph 66 of Van Colle v Chief Constable of the Hertfordshire Police [2009] 1 AC 225.

> "In Re Officer L [2007] 1 WLR 2135 para 20, Lord Carswell said that the real and immediate test is one that is not readily satisfied, the threshold being high. I read his words as amounting to no more than a comment on the nature of the test which the Strasbourg Court has laid down, not as qualification or a gloss upon it. We are fortunate that, in the case of this vitally important Convention right, the Strasbourg Court has expressed itself in such clear terms. It has provided us with an objective test which requires no further explanation. The question in each case will be whether on the facts it has been satisfied."

It may be that when coupled with an overall threat level which is Severe that he is right in that but I think it is for an appellate court to so find, if indeed it is necessary to do so.

[53] Bearing that dictum in mind and the comments above I turn to a second and alternative submission on behalf of the police officers who have been refused anonymity and screening. It will be recalled that after his provisional decisions on anonymity the Coroner received further submissions from the parties and then delivered a general ruling or generic decision concerning applicants AA, B, C, D, F,

H, R, E and M. That is to be found, inter alia, at page 334 of Jordan volume 2. I quote from paragraph 10 at page 336 of the Coroner's ruling.

> "I have taken the view that a moderate risk is insufficient to engage Article 2 ECHR. Counsel for applicants C, D, H and R argue that a risk that rose to moderate was sufficient to engage Article 2. I do not accept that a moderate risk, defined by the Security Service as `an attack is possible, but not likely' (or any lower risk categorisation) can amount to a real and immediate threat as envisaged by the House of Lords in Re Officer L. I am reassured in my view by the decision of the Honourable Mr Justice Weatherup in Sunday Newspaper Limited's Application (Judgment No 2). A material rise in risk will not engage Article 2 in the absence of a real and immediate risk and a moderate risk as defined in above cannot be classified as one that is real and immediate."
>
> (My underlining).

Here I must differ from the Coroner. It seems to me that he has taken the Security Service assessments as close to determining his own decision. I find in law that a moderate risk "can amount to a real and immediate threat as envisaged by the House of Lords in Re Officer L." It would seem that the Coroner has overlooked the wording e.g. in the case of C that while there was only a possibility of it rising within the moderate band it might rise beyond the moderate band. He appears not to have given weight to the fact that the overall assessment was severe although that was drawn to his attention in submissions e.g. at page 248. It is highly likely there will be terrorist attacks. The only questions are whether the police and security services may foil those or if they do not foil them, as they have been unable to do on many occasions in the past, which unfortunate individual will be the target of a homicidal attack. It is palpably obvious that if at such time a police officer is named as being involved in the controversial shooting dead of someone believed to be a republican, who may well have friends who are now in dissident IRA, would thereby be at increased risk of being the target of one such attack. Unhappily, the history of the troubles shows that public prominence sometimes became the prelude to murder and assassination.

[54] It seems to me therefore that on that generic basis and on that analysis of Article 2 in the light of the circumstances of this case and the authorities I should accept and uphold the decision of the Coroner in granting anonymity to B, E, F and M, but I say a little more about this below. The decision about AB was only provisional but is now also in favour of anonymity. The next of kin accept that AA is entitled to anonymity. I will say a word more about Q subsequently in deference to counsel's submissions. I wish to deal with the issue of screening separately and will do so in due course.

[55] What of the Coroner's decision to refuse anonymity to Mr Scoffield's clients? I ought to begin by saying that I find there was a mis-direction of law as to Article 2 i.e. that moderate risk cannot reach the Article 2 threshold. But as I feel unable to conclude that it applied simpliciter to C, D, H, and R it would not be appropriate to quash the Coroner's decision on Article 2 grounds and I do not do so. I shall, however, turn to his decisions based on the common law and I shall do so with the anxious scrutiny required.

Section VII Common Law and Anonymity

[56] It is appropriate to deal with the salient considerations now against and for anonymity. (I bear in mind the factors below regarding screening, where relevant, and vice versa.) Firstly, the granting of anonymity is a departure from the principle of open justice which is an important principle. The Coroner expresses concern that the granting of anonymity "to important witnesses such as [M] has the potential to damage the integrity of the process in the minds of the public". But as has been pointed out the proper audience to consider is the fair minded and well informed member of the public. I do not consider that a well informed and fair minded member of the public in Northern Ireland would think the inquest verdict impaired or the integrity of the process damaged because a police officer was given anonymity to protect his life and reduce the chances of a violent attack upon him. I accept Mr Scoffield's submission that the Coroner would appear to have misdirected himself in that way.

[57] Secondly, it is significant that the Coroner does not consider that the anonymity would impair the substantive work of the inquest in arriving at a verdict on which others could rely setting out the circumstances, compliant with Article 2, in which Mr Pearse Jordan came to be shot dead. He is reinforced in that by the express views of the very experienced Senior Coroner in his earlier decision of 2009. Thirdly, the next of kin argues that their interest is also in open justice. It is clear from the papers that the Coroner is very concerned about that issue and it does not seem to me that counsel for the next of kin really adds anything to his concern on that topic. All parties should aspire to ensure that this inquest arrives at the truth.

[58] The fourth topic to consider against the granting of anonymity is the submission by Ms Quinlivan, mentioned above, that she and the other legal advisers to the next of kin may be able to ascertain some matter adverse to a witness which could be put to him at the inquest if they are given the names in advance. One must bear in mind that owing to the interaction with other inquiries and, no doubt the diligence of counsel and others, the advisers to the next of kin do know of the involvement of some these officers even as ciphers, in other fatal incidents. We also know that, as she acknowledged, that she and others with her may well recognise some of the officers as they will not, in any event be screened from them. In those circumstances they would be able to put matters that they knew to them or to ask the Coroner to defer the witness if they believe there may be something that they would wish to put and they want to make enquiries. They would no doubt in those

circumstances be careful to be discreet in their enquiries and not breach the anonymity order. All we are left with there is a possibility, and it seems to me a rather small possibility that they might, knowing the names in advance or at the time, be able to learn something to put against the officers. But I have pointed out in the earlier paragraphs of this judgement that there are in the criminal law, where a higher standard should apply, considerable limitations in cross-examination as to credit. I would presume that the witnesses themselves, and if they were in breach of this, the Chief Constable, would have drawn to the attention of the Coroner if any of these officers have been convicted of criminal offences. So the effect of being able to, possibly, find something to put to the witness seems to me of slight importance. I also take into account that this is an inquest and not a criminal trial nor a civil claim. It seems to be therefore that this argument is a very slight weight.

[59] Ms Quinlivan also relies, fifthly, on Article 10 of the European Convention. I accept Mr Doran's submission that this is really not applicable here. The press have not complained about the grant of anonymity. Mr Jordan's freedom of expression is not in practice limited. If the inquest leads to an officer, who has been anonymous at the inquest being the subject of criminal or civil claim that person will need to be identified, in all likelihood. In any event Article 10 is a very conditional freedom as can be seen from paragraph 2 in particular.

[60] In Van Mechelen and Others v Netherlands (1998) 25 EHR 647 the applicants were convicted of attempted manslaughter and robbery. Police officers were anonymous and only their statements were put in evidence initially. On appeal the Court of Appeal in the Netherlands returned the matter to the investigating judge and the police witnesses were still anonymous in one room with the lawyers and their client in another room. The court held that the use of police officers, who owed a general duty of obedience to the State's Executive Authorities and usually have links to the prosecution, should only be resorted to in exceptional circumstances. I respectfully agree with that but bear in mind the distinction between criminal trial and an inquest – see Bubbins below.

[61] I now turn to consider the factors in favour of either arriving at a different decision from the Coroner in this court or remitting any of his refusals of anonymity to him. I do this on a generic basis at the request of Mr Scoffield who reserved particular argument on his individual clients, without dissent from other parties. This issue of anonymity at an inquest for police officers has been the subject of a specific decision with regard to the United Kingdom in the Strasbourg Court. I have been referred to Bubbins v United Kingdom (2005) 41 EHRR 24. Michael Fitzgerald was a British national who was thought to have broken into a flat, who seems to have been under the influence of a high level of alcohol and who waved a replica gun at police officers one of whom then shot him dead. At the inquest the Coroner granted anonymity to the four armed officers who had attended at the scene ; he also allowed them to be screened. The court held unanimously that there had been no violation of Article 2 under either its substantive or procedural head though by a

majority found a violation of Article 13 and directed a payment of €10,000 for non-pecuniary damage.

[62] At paragraph 16 of the headnote it is recorded that the decision to grant anonymity to the officers represented a careful balancing of the interests of the family with the possibility of reprisals against officer B. The Coroner gave full reasons, which were endorsed by the High Court. Principles from Article 6 case law and witness anonymity were relevant in assessing whether the inquest guaranteed the applicant sufficient participation in the hearing and the securing of public accountability for the death of Fitzgerald. The officers gave evidence and were cross-examined in the sight of the Coroner, family lawyers and jury. Anonymity therefore did not undermine the effectiveness of the inquest. This summary is based on paragraphs 155 to 158 of the judgement of the court. It is most interesting to note that at paragraph 156 the court pointed out that "the inquest proceedings did not involve the determination of a criminal charge against officer B. For that reason, and insofar as the applicant relies on Article 6 to contest the fairness of the procedure, her complaint must be considered incompatible ratione materiae with the provisions of the convention. Nevertheless, the principles which emerge from Article 6 case law on the issue of anonymous witnesses were not without relevance to its Article 2 assessment of whether the inquest guaranteed, first, the applicant has sufficient measure of participation in the investigation into the death of Michael Fitzgerald and, secondly, an appropriate forum for securing the public accountability of the State and its agents for their alleged acts and omissions leading to the death of Michael Fitzgerald."

[63] This express ruling that Article 6 does not apply reinforces the observations I made at the commencement of this judgement of the clear distinction to be drawn between an Article 6 compliant trial and what is at the end of the day only an inquest. This unhappy incident took place in Bedfordshire. It was not claimed there were any terrorists active there but it was contended on behalf of the officers and officer B in particular who lived near the scene of the incident that he and his family could be exposed to verbal and physical abuse if his name were to be disclosed. The applicant complained that this was raised late in the day. However, the Coroner ruled in his favour saying (para 88) that Bedfordshire police were a small force with a handful only of armed response officers and the naming therefore of A, C and D would be likely to identify officer B by default. All four officers had expressed fear about their privacy but also their safety because some lived nearby and "there were serious and violent criminals living and operating within the locality and identification of members of the armed response team would not be either in the interests of those of the individuals or in the public interest." I observe that there was no suggestion that the violent criminals felt aggrieved at the death of Michael Fitzgerald. There is no suggestion that the unlucky deceased was linked to them in any way but nevertheless the European Court upheld the decision to grant them anonymity. Interestingly, the Strasbourg Court also upheld the Coroner's right to actually direct the jury to bring in a verdict of lawful killing although there had

been undoubtedly some regrettable failures to pass on information that might have avoided the fatality.

[64] Mr Scoffield also relied in distinguishing Weatherup J in Sunday Newspapers (where he pointed out that the judge did not say that moderate risk could never be Article 2) on the dicta of Girvan LJ in Re A op. cit. at his (second) [33] with which I respectfully agree.

[65] I accept Mr Scoffield's submission that on reading his provisional and final decisions it does appear that the Coroner continued to treat the fears of the officers who were only at moderate risk as subjective whereas in fact they had had objective verification albeit to a lesser degree of risk than M and others.

[66] Mr Scoffield relies on Article 8 of the Convention in support of his disappointed clients. I accept the right to respect for private and family life is engaged here. To have one's involvement in a controversial shooting publicly examined is inevitably going to involve a loss of privacy and some potential embarrassment to family life. It should not be thought that everyone in Northern Ireland lives and works in rigid ghettos. That is simply not the case. If the officers and their family are still resident in Northern Ireland and lacking in anonymity it is entirely likely that someone of their acquaintance will be at least displeased, or worse, at their involvement in the incident, although no doubt they would hope that the ultimate outcome before a jury might vindicate them. The point is particularly made that in the case of retired officers many people might not realise they had been in the police at all let alone involved in the Special Operations Branch of the HMSU. I accept the submission that Article 8 "trumps" Article 10 here and is a fact that ought to have been taken into account. I share his unease that despite the oblique reference to other convention rights at paragraph 15 of the Coroner's generic decision he did not give adequate weight to this topic. I agree with Girvan LJ's comment in Re A, op. cit., that one should not subject everything to a minute examination although that is likely to be inevitable where someone feels their life is being put at risk but I think in these circumstances the Article 8 point has not been adequately dealt with. Counsel drew attention to the decision of the Court of Appeal in England in R (Bloggs 61) v Home Secretary [2003] All ER (D) 243; (2003) EWCA CIV 686. I note the comments made. The court warns that it could also be unhelpful to attempt to identify some sort of broad tariff of thresholds of risk for different categories of case.

[67] Mr Scoffield points out that the assessments are cautious and, in the case of the police, advert to the influence on any personal security of "whether or not [the evidence] is considered `controversial' in nature". I accept his submission that in dealing with the risk to life in the context of an ongoing terrorist threat in Northern Ireland, which has been shown to have particular menace for those who enforce the law, it is right to adopt a precautionary approach. The potential for the risk to his disappointed clients is to rise beyond moderate and I accept that could well be the case if their evidence proves to be controversial. There is nothing unlikely in that

given the high profile that this inquest has had over an extraordinary period of time and the vigour with which the interests of the parties is being pursued.

[68] In Reg(E) v Chairman of the Inquiry into the death of Azelle Rodney [2012] EWHC 563 (Admin) a Divisional Court had to consider the grant of anonymity to some police officers who were involved in the fatal shooting of Mr Rodney in a motor car, in which 3 handguns were subsequently found. They did grant anonymity to a number of officers but, and I shall have to return to this, not in some cases screening. Laws LJ emphasised at paragraph 24 that the primary decision-maker will generally be much better placed than a reviewing court to decide where the balance of competing rights and interests should fall. "He pointed out that there must be a very pressing public interest in openness on the facts of this case. It concerns after all, a man sitting in a car with no weapon in his hand who has 8 shots fired at him at close range causing his death." This was not an inquest but an inquiry under the 2005 Act because some evidence was to be given in closed session which is not the case with the Jordan inquest. The Divisional Court upheld the Chairman's decision. I was subsequently furnished with a document from the inquiry website showing the ciphered witnesses who were granted anonymity and screening (S1-S5 and E7). The senior commander Silver while anonymised should give his evidence unscreened. Likewise a significant number of other officers with less prominent roles were granted anonymity but were to give their evidence unscreened. I note further that Sir Christopher Holland, the Inquiry Chairman, permitted Mrs Alexander the next of kin, it appears, of the deceased to see the screened witness also. I do not intend to rule on this but I invite the Coroner to consider whether it might be helpful to mitigate the effects of anonymity where it is granted and screening where that is granted to allow Mr and Mrs Hugh Jordan to sit with their solicitors and see the witnesses. This was not fully argued before me but arose from this document. I accept that the Coroner would have to hear any objections from police officers. I would respectfully urge them not to make objections unnecessarily. One might have thought that they and the 71-year-old Mr Jordan should all be anxious to finally dispose of this long running process.

[69] Although he did not put it in this way an issue of fairness arises where police officers in similar positions to the police witnesses here in an inquiry and an inquest in England have both been given anonymity, and mostly, screening. A point made by Ms Quinlivan is that the combination of anonymity and screening may give a witness a sense of immunity from cross-examination. It is very hard to assess this. I have to deal with the question of screening in due course. I think Mr Scoffield's response on the issue of anonymity is an effective one, i.e. that the Coroner is at liberty at the conclusion of the inquest to remove the protection of anonymity from a witness. There is also the point that a witness who is anonymous whether screened or not, talking about another police officer who is also anonymous may possibly be more ready to criticise his colleague for what he did on the day if criticism is justified, and knowing that in so doing he was not putting his life at risk.

[70] Mr Scoffield relied on the statement of Mr Leckey, the Senior Coroner, in 2009 that in his own experience the impact of anonymity was not harmful and the impact would indeed be minimal as Lord Wolfe had said. See paragraph 1.02 of Mr Leckey's 2009 decision.

[71] In Attorney General v Leveller Magazine [1979] AC440 at 451 Lord Diplock referred to anonymity as "a much less drastic derogation from the principle of open justice as adequate to protect the interests of national security" in contrast to a closed session.

[72] Counsel understood that the ranks of the officers were also to be disclosed or at least their ranks at the time which would allow those following the matter to understand the different roles involved. That too seems commendable though I would observe that the key point in the inquest is for the jury to establish the circumstances in which Mr Jordan met his death and that the public's interest must be secondary to that.

[73] Officers D, H and R are all retired. They have been refused anonymity and screening. I have considered whether I should remit their cases to the Coroner for him to conduct an oral interview, as apparently has happened in at least one of the ongoing inquiries in Northern Ireland in which to ascertain the extent of their vulnerability to a violent attack. I note that while such attacks could be by the placing of explosive devices they could also be attacked with gun fire. Even if they have their personal protection weapons it seems to me, as set out above, that they must be more vulnerable to attack than serving officers. Given the security assessments in their case and given the background of a severe risk of terrorist attack in Northern Ireland I think it only requires a modest degree of additional vulnerability to conclude that Article 2 is engaged in their case. I consider anonymity a relatively modest derogation in the circumstances and a step which the State is obliged to take to protect their lives. I have balanced the competing interests. I do not wish to cause further delay. I not only quash the decision of the Coroner, for the reasons above, in regard to those officers but I substitute the grant of anonymity to them.

[74] As some different factors apply to officers A and C I will reserve my decision on them to allow Mr Scoffield an opportunity to address me.

[75] Out of an excess of caution I will say a few words at this time as to the general approach to the common law assessment by the Coroner in the light of criticisms on behalf of the next of kin. These are set out paragraph 9 of the issues paper from the next of kin. I summarise my findings as follows.

(i) Rather than place an undue weight on the subjective fears of the officers the Coroner failed to recognise that they had had objective support.

(ii) The Coroner was well aware of the principle of open justice and gave it adequate weight.

(iii) I consider the Coroner did give adequate weight to any Article 2 rights of the next of kin i.e. for an effective investigation.

(iv) I have already dealt with Article 10 and I consider the Coroner's oblique reference to it was sufficient in the circumstances.

(v) Mr Doran has satisfied me that the Coroner did recognise, as he expressly said, the factor of open evidence being given in criminal trials before by officers. However, this will have to be looked at again in connection with screening.

(vi) This point was not pressed before me and it seems to me to overlap with other points and not to ground a criticism of the Coroner.

(vii) In part this overlaps with (v). As to the suggestion that "there is no justification to have lower standards of open justice in an inquest" it is nevertheless the case that inquests are different from criminal trials and that the Coroner is entitled and obliged to take that into account, as I am, in balancing competing interests.

(viii) Mr Doran has satisfied me that the Coroner was indeed alert to the fact that a number of the witnesses are serving police officers.

That leaves for my consideration the issues of screening and the individual cases of Q, AA (screening - anonymity agreed) A, C and AB.

[76] To recap briefly I have been asked to defer a conclusion on officer V and officer A because material currently the subject of a public interest immunity application has not yet been ruled on by the Coroner. In fact no application in respect of V is currently before me.

[77] I have considered the decision of the Coroner in regard to officer AB. He was granted anonymity pursuant to both Article 2 and common law. He is retired, clearly for some years, having joined the RUC in 1970 and served throughout the troubles. He served for very many years in the special branch of the RUC. He had set out in his personal statement, which is commendably unredacted by the Crown Solicitors Office, a number of relevant personal details about his life. As this judgment will be published on the Internet I do not propose to set these out here. I have read the submissions on behalf of the next of kin. They draw attention to the fact that he had been refused anonymity in 2011. However the Coroner attached to a letter of 22 August 2012 to the next of kin's solicitor the Security Service risk assessments for 13 May 2011, 2 April 2012 and 19 June 2012. The Coroner's change of decision can be seen to take into account not only the personal statement but the

fact that the earlier assessment kept him squarely in the moderate category whereas the two later assessments in 2012 cannot rule out the possibility that the level of threat to him may rise beyond the moderate level if he gives evidence without the benefit of screening/anonymity. In those circumstances I uphold the Coroner's decision with regard to anonymity. As indicated I postpone for the moment the issue of screening. The next of kin do not object to the grant of anonymity to officer AA who like officer AB is both retired and suffering from ill health.

[78] Four officers were the subject of an application by the next of kin challenging the Coroner's grant of anonymity (and screening) to them. All four were in the moderate category but with the potential to rise into the substantial risk category if they gave evidence without anonymity and screening. In the case of all four therefore, on a proper view of the law, Article 2 was indeed engaged. As Lord Carswell said in officer L it would not be difficult to take the step of granting "a degree of anonymity" in such situations. The Coroner also granted them anonymity on common law grounds. In the case of officer M he took into account the matters in his personal statement including the impact on his family life. This officer is retired. He has a distinctive appearance. I confirm the grant of anonymity. Officer F is also retired. He does not claim a distinctive personal appearance but he has set out matters in his personal statement which are relevant. I affirm the decision of the Coroner to grant him anonymity.

[79] Officer B is a further officer whose current moderate risk has potential to rise into the substantial category and the Coroner was therefore entitled to consider that Article 2 applied. His personal statement in the form I have it is very heavily redacted but the Coroner has seen the original. I also note that this officer is retired. In the circumstances I leave in place the decision of the Coroner. Officer E in this category of moderate with the potential to rise into substantial risk is in a different position in as much as he is still a serving officer. I accept the next of kin's submission that that is a relevant consideration. However the Coroner has taken into account his personal circumstances which apparently include a distinctive physical appearance. Like his colleagues he has subjective fears about giving evidence which is entirely understandable and which has been given some objective verification by the Security Service assessment. As Article 2 is engaged here and given the factors mentioned I do not feel it proper to interfere with the Coroner's decision and I affirm the grant of anonymity.

[80] I have already dealt with Officers D, H and R granting them anonymity at common law. I have noted on the one hand that they have had this for 20 years and on the other that D starts with a low assessment, presumably as he lives outside Northern Ireland. Officer C is a serving officer in the same broad category as D, H and R. I wish to hear counsel in regard to his situation which is currently one where anonymity was refused.

[81] Officer Q had an initial provisional decision which on 17 August the Coroner made final granting him anonymity not under Article 2 but at common law. Q is in

the same position as D, H and R in that he is a retired officer whose risk was moderate but with the possibility of rising within that category or beyond. Although the Coroner considers him to be one of the more important witnesses I do note his actual role was a log keeper not present at the scene and indeed not in fact apparently making any radio transmissions on the day in question. He asserted that he and his family suffered from serious illness. In an initial decision therefore the Coroner quite rightly invited him to furnish evidence of that. Counsel for the next of kin point out that rather than providing evidence that he and close family members suffer or suffered serious illness he proffered, on or after the 4 July 2012, a short letter from his General Practitioner. He records that the witness had attended on 22 June and that he had got a letter from his solicitors on 27 June. On 22nd he complained of acute anxiety in relation to an impending court appearance. There is no reference to any past serious illness on his part or that of his family. The Coroner took the charitable view that he did not choose to pursue that. The counsel for the next of kin invited the court to adopt a more critical view. It is indeed my duty to consider the matter with anxious scrutiny. I consider the decision of the Coroner to grant immunity here is vindicated because the general practitioner not only reported complaints from officer Q but went on as follows.

> "He had significant symptoms which in my opinion are likely to continue for some significant time. He was prescribes anxiolytic medication and I counselled him regarding anxiety management. It is also my opinion that appearing in court may very well cause his symptoms to significantly deteriorate and I therefore consider that such a court appearance would be detrimental to his health and wellbeing. I would respectfully request that this is taken into account."

We have therefore from the doctor a professional opinion that he is suffering from anxiety justifying medication and counselling and which is at risk of significant deterioration if he gives evidence. In fairness to Officer Q he doesn't seek on the basis of that to absent himself completely from the enquiry but only asks for anonymity and screening. In my view he is entitled to anonymity and I uphold the decision of the Coroner. The next of kin relies on a decision of McCloskey J in Anglo Irish Bank Corporation Ltd v Williamson [2010] NIQB117 but the facts and circumstances are clearly very different.

[82] That concludes the decisions in the individual cases. In arriving at those I take into account the factors I have set out above in this judgment without repeating them all. I might single out, without making light of other reasons in any way, the fact that this is an inquest and not a criminal trial or civil claim in which these men are parties.

SECTION VIII Screening

[83] Those officers who were not granted screening complain of that while the next of kin complains that other officers or ex-officers are to be screened as well as

anonymous. Mr Doran on behalf of the Coroner has drawn attention to express references by the Coroner in his provisional decisions regarding B, E, F and M to the issue of screening with a further reference in his generic decision. It cannot be said, I find, that he has failed to take this into account as a separate measure. There is no obligation on the decision maker to answer every submission made by parties seriatim. The complaint on that ground would therefore fall on Wednesbury grounds. But it is my duty, in this matter touching on the most important human right of all, to examine the decision with anxious scrutiny. I propose to do so. I accept the submission on behalf of the next of kin that this is an additional measure to anonymity and that it requires justification.

[84] The close reader of the judgment can see that a number of the matters set out above are relevant to the decisions of the Coroner on screening either under Article 2 or at common law. For convenience I shall take the approach commended by Lord Carswell in Officer L and consider the matter at common law with an excursion into Article 2 when appropriate. I set out what seem to be some at least of the relevant factors without putting them in any specific order.

[85] I propose to begin with the factors militating against the screening of these witnesses. Firstly it is a derogation from the general principle of open justice. I accept that there is a presumption in favour of that. Secondly counsel for the next of kin submits that it is damaging to the public perception of the inquest if a substantial number of witnesses are screened. There may be validity in that point but I remind myself that the purpose of the inquest is to enable the Coroner and the jury to ascertain the truth of how this man died and those circumstances which are relevant in Article 2 adjectival terms. It is not primarily for the spectators but to satisfy the public at large, and the fair minded public at large, that a thorough investigation has been conducted.

[86] Thirdly, Ms Quinlivan argues that if one adds screening to anonymity one may confer on the witness a feeling of immunity. She implies that the witness will be more difficult to cross-examine behind the screens, both physical and legal.

[87] Fourthly, she then suggested this will impact upon the role of the next of kin in the inquest. The appropriate test is that to be found in Anguelova v Bulgaria [2004 38 EHR 31 at paragraph 140]. There the Strasbourg court set this out as one of a number of general principles.

> "There must be a sufficient element of public scrutiny of the investigation or it 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 interest."

I consider in detail the various points advanced on behalf of the next of kin but it does not seem to me that screening would fail that test here. I notice that among the other general principles described by the court is the following sentence at paragraph 139.

> "The investigation must also be effective in the sense that it is capable of leading to the identification and punishment of those responsible."

This is consistent with the other authorities as distinguishing the role of an inquest from that of any subsequent trial, if any.

[88] Fifthly, I bear in mind the dictum of Nicholson LJ in Re: Mary Doherty's Application [2002] NICA 25 to this effect.

> "If any of the police officers resided in Great Britain, I would have held the ruling in his favour was irrational. Nothing in this judgment is intended to give any support for any application by any soldier for screening if he resides in Great Britain. But if there are special circumstances in any given case it is a matter for the Tribunal, not the court."

This is a reference to Kerr J upholding the Tribunal's decision to allow screening of some 20 police officers giving evidence to the Bloody Sunday tribunal in the City of Derry. Counsel argues that no harm can arise to an anonymous witness who is screened if they live in Great Britain because it is so unlikely that any observation of them could be brought home to them unless they were living in the smaller community of Northern Ireland.

[89] Sixthly, in the Azelle Rodney Inquiry some officers were both anonymous and screened but some were anonymous or pseudonymous but were unscreened. That included an officer with responsibility for the operation in which Mr Rodney was shot dead. He had the cypher Silver but was to give evidence unscreened.

[90] Seventhly, it is suggested that if as is the case with regard to a number of these witnesses that they have given evidence, sometimes quite often, before in criminal trials here unscreened then they should not object to screening now. I do not think that too much weight can be put on this. The evidence may have been many years ago or have involved the trials of persons from different groups or mere criminals. It is not suggested that they are household names. Giving evidence unscreened here is, in the clear view of the Security Service, potentially capable of increasing the risk to the witness.

[91] Eighthly, a serving police officer, whether or not he has given evidence before is a servant of the State and it is his duty to give evidence save in exceptional circumstances. The next of kin relies on Van Mechelen op. cit. But it is important to bear in mind that that was in a criminal trial subject to Article 6 inter alia and not an inquest.

[92] Ninthly, Miss Quinlivan points out, indeed presently recollected, that AA, AB and R gave evidence anonymously but unscreened at the aborted inquest. But that was 17 years ago. How many, if any, would remember their appearance? How many of those people would still be likely to resort to violence? Is it not likely that their appearance would have changed to a greater or lesser extent in the interim? However, I do bear the point in mind that what it really indicates is that witnesses were expected to give evidence unscreened much more readily in the past than seems to be the case in recent years.

[93] The point is advanced, tenthly, at paragraph 104 of the next of kin's skeleton argument which I have to say I find far-fetched i.e. that one of the other witnesses who saw the police officer at the scene might be able to point them out if they were not screened. If, which has not yet been demonstrated, it was important the Coroner might allow a civilian witness to attend when the officers he is describing may be giving evidence and to see them but I am not directing that. The Coroner will know from his greatly vaster knowledge of the case whether that would be justified. It is for him to conduct his own court as he thinks fit, as far as possible.

[94] Eleventhly, the next of kin advance an argument at paragraph 105 of the skeleton argument which I completely reject – counsel can put any descriptions to the witness and that does not justify not screening one of the witnesses.

[95] Twelfthly, an apprehension is expressed that the jury might be prejudiced against the next of kin if they were with the public not seeing some of the witnesses. It is suggested that that might lead the jury to think that they were untrustworthy. I am not sure whether Mr and Mrs Jordan have any evidence themselves to give to the inquest. I find the point a somewhat tenuous one but it could be addressed, if the Coroner thought fit, by allowing Mr and Mrs Jordan to sit with their solicitor during the inquest. This has not been fully argued before me in any way and I give no direction. I accept that if he was taking that course he would have to allow police officers an opportunity to object. One might hope that they and the next of kin would not raise points unless they really felt strongly about them because one might have thought that they had a considerable personal interest in finally getting on with this inquest.

[96] Against these points a number of points are made <u>in favour of screening</u>. Firstly some of these witnesses are at a real and immediate risk to life if they give evidence without anonymity and screening at this inquest. The two are coupled in the risk assessments of the Security Service. Screening remains a relatively modest derogation from open justice and in some cases that is an end of the matter.

[97] Secondly, this is not a trial. It is an inquest.

[98] Thirdly, it is very hard on retired police officers to require them to give evidence unscreened. For some twenty years they have enjoyed anonymity. While a couple are only recently retired a number of them have clearly been retired for an

extended period of time. They are discharging their public duty in coming to give evidence before the inquest and they should be permitted the modest degree of protection that screening provides them in addition to anonymity.

[99] Fourthly, even though some of these officers may have availed of the terms offered to police officers on foot of the Patten Report and retired quite young I cannot see that any of the retired officers are less than in their fifties and some are clearly older. They are likely to be less agile and have less quick reactions if they are attacked. If the failure to screen increases their risk at all they are less able to cope with that risk.

[100] Fifthly, the increased risk from not being screened is not imaginary. The inquest is to be held in public. There is nothing to stop terrorists or their adherents and supporters from sitting and listening, perhaps for hours, while an anonymous but unscreened officer gives evidence. There is a possibility, particularly if the officer lives in Northern Ireland, than one of a number of such malign observers in fact recognises an officer, particularly a retired officer from some economic or charitable endeavour with which he is involved. I think I have said not everybody in Northern Ireland is living and certainly not working in a ghetto. Sherlock Holmes greets the eponymous subject of The Norwood Builder in this way. "You mentioned your name as if I should recognise it, but beyond the obvious facts that you are a bachelor, a solicitor, a Freemason, and an asthmatic, I know nothing whatever about you." Clearly if someone ever enjoyed those powers they are not presumed to exist in this context but I am entirely satisfied that somebody who chooses to come and stare at an unscreened witness may well successfully remember his face for some future sinister purpose.

[101] Sixthly, given there is any risk to life, even if it is not immediate, a precautionary approach is advisable and appropriate.

[102] Seventhly, at least three of the officers claim a distinctive physical appearance. If that is indeed the case that would re-inforce their claim to screening.

[103] Eighthly, in a number of cases the witness is not in the best of health. They all have subjective fears which have all been objectively verified to a greater or lesser extent. Worsening the health and adding to the stress on somebody who is after all, discharging their public duty as a witness is a reason for permitting them to be screened.

[104] Ninthly, additional support for that last point is given by the fact that they are talking about things that happened 20 years ago, they having preserved their anonymity until now, despite the renewed efforts of the next of kin and without any waiver on their part.

[105] Tenthly, there is a possible risk of them being photographed given the capacity of many or most modern mobile phones to be used as cameras. This point

however could be disposed of if the Coroner prohibited mobile phones completely from the inquest or prohibited them when certain witnesses were giving evidence.

[106] Eleventhly, in Bubbins op. cit. the European Court of Human Rights expressly approbated the Coroner's decision, upheld in the High Court, to grant not only anonymity to the four police officers closely involved in the death of Mr Fitzgerald but their giving of evidence hidden from the public by a screen. In that inquest, as here if screened they would still be in the sight of "the Coroner, the family's lawyers and the jury." (Paragraph 157). I have referred to this case above, arising out of an incident in Bedfordshire with no terrorist element.

[107] Twelfthly, in the Azelle Rodney case many officers involved in the incident and roughly equivalent to these officers were given both anonymity and screening and that was upheld by the Divisional Court.

[108] Thirteenthly, it seems to me at least possible that rather than a witness feeling immunity, an officer, possibly particularly if retired, might be more ready to criticise a former colleague in past years if he knew in doing that that not only was he anonymous and screened but he would not be endangering the life of his former colleague because he too would be anonymous and screened.

[109] It is clear that some of these reasons obviously will carry greater weight than others. I seek to now apply them to the individual witnesses. I shall do so in alphabetical order.

(i) AA – his anonymity is accepted but his screening is objected to by the next of kin. I propose to hear counsel in regard to his case.

(ii) AB – I wish to hear counsel in regard to this officer's case, as to whether he should retain screening.

(iii) I have agreed to defer a decision on A's case.

(iv) B was able to invoke Article 2. Furthermore, the officer is retired. I uphold the decision of the Coroner to grant him screening.

(v) I will hear counsel in regard to the screening of Officer C who might bear some comparisons with Silver in the Rodney inquiry.

(vi) Witness D has a level of risk just below what is clearly Article 2. I found that he is entitled to anonymity. I note that he is retired. I take into account the reasons I have set out above. If he is resident in Northern Ireland I quash the decision of the Coroner and direct that he also be screened when giving evidence; but I will hear counsel as to whether this is currently the case and if it is not on which side of the line he falls.

(vii) Officer E is somebody who is entitled to avail of Article 2. On the other hand he is a serving officer. He acknowledges, as the Coroner noted in his provisional decision, that he has given evidence in numerous criminal and terrorist prosecutions without the benefit of anonymity. It may be that the only point therefore in his case is that he will now become associated with the Jordan controversy. It seems to me that if this man does have, as is claimed on his behalf, a distinctive physical appearance that would tip the balance in favour of him being granted anonymity. I remit this decision to the Coroner to review his own decision in favour of screening in the light of this judgement and in the light of a confidential meeting with Officer E to form his own judgement about this matter.

(viii) Mr F is assessed as being entitled to Article 2 in which case this is a modest step to follow. As he like B is retired I affirm the Coroner's decision to give him the right to give evidence screened.

(ix) Officer H falls just below the Article 2 standard viewed simpliciter but as mentioned elsewhere above given the background risk in Northern Ireland is now stated to be severe and given that this officer is retired and has had anonymity for 20 years I consider that like B he should be allowed to give evidence while screened.

(x) Mr M is clearly an important witness. But given that he is able to invoke Article 2, is retired and claims to have a distinctive physical appearance I do not think I could properly interfere with the Coroner's decision to have him screened while he gives evidence and I therefor affirm the decision of the Coroner.

(xi) In the case of Q while just outside the Article 2 range he has also been stated by a doctor to have significant symptoms of anxiety likely to be exacerbated by giving evidence. For the reasons stated above I uphold the decision of the Coroner on common law grounds to allow him to give evidence while screened.

(xii) Officer R is one of those officers with a moderate risk which might rise beyond that. He is retired and it seems to me he is in the same category as H, even if he did give evidence unscreened in 1995. I quash the decision of the Coroner and direct that he may give his evidence while screened.

(xiii) I have agreed to defer a decision on Officer V's anonymity and I will deal with screening at the same time, when and if an application is brought. Hopefully that will not be necessary.

(The court heard further submissions from Mr Montague QC and Mr Scoffield QC and Ms Quinlivan QC on 17 September and the judgment concluded in the following way on 18 September.)

A

[110] The Coroner refused both anonymity and screening to Mr A, as he now is. Dealing with anonymity first, I have refreshed my memory of the reasons militating against a grant of anonymity both from the submissions of counsel, the provisional decision of the Coroner (which Mr Schofield criticises) and the judgment above. Of these the most important are the desirability of open justice [56], the small possibility that prior knowledge of his identity might assist the next of kin [58] and the fact that he not only does not live in Northern Ireland but lives outside the United Kingdom. At [57] above I dealt with Ms Quinlivan's contention that the inquest would itself be substantively impaired by anonymity but as can be seen I accepted the views of the Coroner and Senior Coroner that that would not be the case subject to the very small possibility mentioned above.

[111] This is the man who fired the fatal shots at Pearse Jordan. On the one hand that might be an argument in favour of the next of kin and the general public seeing him and knowing who he is. That is true of a number of men who fired the fatal shots in the 1982 incidents but a number of those were prosecuted in relation to that although not all of them. They were acquitted but their identities were thereby known. Against that Mr Schofield submits that it would be "astounding" if he was refused anonymity when other officers with a lesser involvement were granted it. But there is no evidence that those named in the 1980's have been the target of attacks.

[112] There are a number of good solid reasons in favour of granting anonymity. Even though he lives outside the United Kingdom the loss of anonymity must lead to some increase in the risk to him. That was put at low rising to moderate and perhaps beyond if he gave evidence without anonymity and screening. See my remarks at paragraph [53] above.

[113] The fact of the matter is that there are terrorists still operating in Northern Ireland. We are not yet in a purely historical phase looking back on a troubled episode in our history which has ended. Some persons have reopened that episode, since the decision of the House of Lords in Officer L [2007]. It is right in the circumstances to adopt a precautionary approach. I accept that the risk to him, as assessed by the Security Service is less than others, no doubt in part because he lives outside the United Kingdom but it is not non-existent.

[114] On a common law basis it seems hard on him as a man who has retired for more than 10 years to come back and give evidence about these matters, let alone to be identified in connection with it. I hear the submission that his failure to cooperate

with the Coroner should deprive him of the right to ask for the court to act fairly towards him but I do not accept it. In discharging its duties the court must act fairly and not in a penal or punitive way, particularly in this context. In any event as Mr Schofield pointed out Lord Carswell in Officer L at paragraph 22 made express references to the witnesses whom the Coroner "proposes to call" i.e. they are entitled to know in advance before they come what the position will be.

[115] This man was involved in a specialist anti-terrorist unit. He was promoted to the rank of sergeant and commended three times. He served for 28 years throughout the troubles. He is 61 years of age. In my view these factors militate in favour of granting him anonymity.

[116] I think further that it would be unfair to him to deny him anonymity when E7 in Rodney and the 4 officers in Bubbins op. cit. were granted anonymity (and screening). I take into account that his adult children continue to live in Northern Ireland and that Article 8 would be engaged to a degree by a natural tendency not to expose their connection and for him to visit them, outweighing any Article 10 considerations.

[117] I therefore conclude as follows. The Coroner erred in applying the wrong test with regard to the security assessment and risk. It is my duty to quash his decision. I do not remit the matter to him but grant anonymity to Mr A.

[118] I now deal with the issue of screening for Mr A. This might seem a more finely balanced decision. I take into account the matters set out above. I am obliged to address the Coroner's common law decision with anxious scrutiny, which I do in all these cases.

[119] Ms Quinlivan submits that, with regard to these officers, there is no evidence they are at risk from non-screening. But in fact the threat assessments on the Security Service do refer to screening as well as anonymity generally, although we have not seen one for A. Given that he is largely absent from Northern Ireland and indeed the United Kingdom the increased risk of him of giving evidence unscreened is not substantial. Nevertheless as I have mentioned above having someone stare at him for a couple of days might lead in due course to identification although I accept that we are talking about quite a small risk here of any additional danger for him. Counsel for the next of kin says he will not be here for weeks as suggested on his behalf because he has refused to come at all. It may be of course, as Mr Schofield suggests, that if he is screened as well as anonymous he will be willing to come. That would assist the search for the truth. It is also right to say that if ultimately the conclusion of the jury led the Coroner to remove his anonymity the fact that he was screened or unscreened would become more important.

[120] I do give weight to the suggestion that it is regrettable if all these officers are both anonymous and giving evidence screened. But as I say the principal reason for that is that there are still terrorists active in our society. The other major factor is that

the incorporation of the Convention in our domestic law has led to greater attention being paid to the topic. Anonymity is more widespread in civil claims and in the reporting of cases than it once was. Whether or not we have a "rights based jurisprudence" is not for me to say but it cannot be denied that privacy and therefore anonymity have received more protection from the courts than in the past. What are rights for the public are rights for the police.

[121] Having balanced the competing interests I quash the decision of the Coroner and rule that Mr A should give his evidence with the benefit of screening.

D

[122] As envisaged in the judgment Mr D is in my view entitled to be screened as well as anonymous if he is resident in Northern Ireland. The court was informed by counsel on instructions that while he works out of Northern Ireland to an extensive degree his home and family remain here. For the various reasons set out above I reverse the decision of the Coroner and direct that he also should be screened as well as anonymous at the hearing of the inquest.

AA

[123] One argument about AA needs to be addressed initially. It was submitted on his behalf that he will have to give evidence at other legacy inquests but Ms Quinlivan complains that no disclosure of that has been made to the next of kin. I remind those advising the Chief Constable that he is under a duty of continuing disclosure in these inquests. If it has not already been done a competent person or persons must ensure that relevant information is provided to the Coroner and not lost because an officer has a different cipher in one fatal incident from another one.

[124] I will not repeat the matters set out above. I note the submissions made on his behalf. I note that he suffers from Post-Traumatic Stress Disorder and is still under medication for that. I note that he too served for a long period of time in the RUC most of it in Special Branch. I note the Coroner did find in favour of giving him screening. I accept the submission of Mr Montague that both the Coroner and this court can reasonably infer that giving evidence, especially without screening may well exacerbate a chronic condition of Post-Traumatic Stress Disorder. Without repeating them I note the submissions that were made to the Coroner and to this court. I note that he has been retired for some years. I note that he was forced to move home because of a specific threat in the past. I note further the personal details of his were removed from Castlereagh in 2002 and thus requiring him to move home again.

[125] There is a possible question over his being granted screening for three reasons. Firstly, taking into account the obiter dictum of Nicholson LJ, he lives outside Northern Ireland (that of course is after having been forced to move twice.) Secondly, he did give evidence without screening in 1995 but that was 17 years ago

and I have dealt with this point above and consider it of little weight. Thirdly, counsel points out that he himself did not seek screening. It is not contended that he has a distinct physical appearance. However, it seems to me when one combines his own personal history, with his medical condition for which he is receiving medication and the fact of his retirement the proper thing is to provide that he should be screened from giving evidence at this inquest. If a trial follows another view may be taken.

AB

[126] Given those findings clearly AB who does live in Northern Ireland and sets out highly relevant matters in his personal statement and is now in his seventies should also be given screening although he too gave evidence unscreened in 1995. I so find.

C

[127] Following the submissions of counsel yesterday I have agreed to remit the decision on both anonymity and screening to the Coroner to make in the light of this judgement. Counsel for the next of kin continued to object to me seeing his un-redacted statement without the next of kin or counsel seeing it. Mr Schofield wished to rely on it to put in the balance of competing interests for the consideration of the court but offered remittal to the Coroner as an alternative. Counsel for the Coroner had no objection to that course nor was there any strenuous objection from counsel for the next of kin. That is the course I have taken therefore.

[127] Therefore, the officers and ex-officers will, after careful consideration by the court, be entitled to anonymity and screening save for the two serving officers whose cases I have remitted to the Coroner.